

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT****CASE TYPE: OTHER CIVIL**

Cristina Aranguiz; and Jodi Connolly, Court File No.: _____

Plaintiffs,

v.

Minnesota Office of Cannabis Management;
and Charlene Briner, in her capacity as
Interim Director of the Minnesota Office of
Cannabis Management,

Defendants.

COMPLAINT

I. INTRODUCTION

1. Like many social-equity applicants in Minnesota's cannabis program, Plaintiffs Cristina Aranguiz and Jodi Connolly sought to enter the state lottery that would allow them a chance to obtain retail and delivery service licenses. Each Plaintiff complied with OCM's requirements, disclosed all information requested by OCM, and truthfully told OCM that she was and is the sole owner of the license-holding entity.

2. On November 18, 2024, the Minnesota Office of Cannabis Management ("OCM") denied Plaintiffs' applications to participate in the lottery.

3. OCM's denial decisions failed to adequately disclose the basis for the agency's decision. Indeed, Plaintiff Connolly did not receive a denial email from OCM *at all*. Upon hearing about denials for other applicants, Plaintiff Connolly checked the application submission portal. There, she found that her application had been denied. But OCM provided her no explanation document or any additional instructions.

4. Plaintiff Aranguiz received a denial from OCM, but the explanation was cursory and made no sense in light of statutory requirements. The denial communication indicated she had failed to disclose partnership agreements or promissory notes. But Aranguiz does not have any such documents, and there is no reason to believe such documents should exist since she is the sole owner of the entity applying for a license.

5. Although OCM did not disclose the reasons for its decisions to these applicants, OCM made statements to the media regarding the denial determinations. OCM indicated that Plaintiffs' denied applications are part of very large group of applications that were denied. On November 19, OCM told *MinnPost* that applications for "about two-thirds of applicants" have been denied because the applicants allegedly "engaged in improper actions such as making multiple applications—dubbed flooding the zone—or were disguising true investors or the so-called true party of interest."¹

6. None of these alleged actions are referenced in the communications sent to Plaintiff Aranguiz. And since Plaintiff Connolly received no communication, OCM did not explain its decision to her either.

7. Plaintiffs are not alone. On information and belief, OCM sent many denial notifications that were either blank or contained the same vague description about "ownership documents" that Plaintiff Aranguiz received. Other applicants, like Plaintiff Connolly, received no notice or explanation about the basis for denial. Contrary to OCM's media statements, Plaintiffs complied with the requirements of Minnesota statute.

¹ <https://www.minnpost.com/state-government/2024/11/two-thirds-of-minnesota-social-equity-cannabis-license-applicants-denied-for-inadequate-documentation-some-shenanigans/>

8. Plaintiffs' only guess about the real reasons for the denials is that the OCM may have denied their applications because they, like many other social equity applicants, were able to apply for licenses by selling options for future ownership interest in their licensed entity in exchange for application assistance and for payment of \$100,000 if the options are exercised. Importantly, the options can only be exercised if state regulators approve them. The options do not provide for any current ownership interest (like a membership or partnership agreement might) nor do they create a financial interest (like a promissory note or securities agreement might). OCM has never suggested that these options are not permitted, and they are not prohibited by the cannabis statutes.

9. Absent court relief, Plaintiffs face the possibility of losing out on the chance to participate in the lottery. On information and belief, OCM plans to run the lottery for the remaining one-third applicants sometime on or shortly after December 2, providing Plaintiffs a very limited window to seek redress for their improper denials.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction under Minn. Stat. § 484.01.

11. Venue is proper in Ramsey County under Minn. Stat. §§ 542.01, 542.03, and 542.09.

III. THE PARTIES

12. Each Plaintiff is an applicant for cannabis retailer and delivery service licenses and applied as a social equity applicant pursuant to Minn. Stat. § 342.17.

13. Defendant Minnesota Office of Cannabis Management ("OCM") is an office of the State of Minnesota formed and existing under the laws of the State of Minnesota. OCM is subject to the laws of the State of Minnesota.

14. Defendant Charlene Briner is the Interim Director of OCM and is named in her official capacity.

IV. FACTUAL BACKGROUND

15. When Governor Walz signed H.F. 100 in May 2023, Minnesota became the 23rd state to legalize recreational cannabis use, cultivation, and sale.

16. The contents of H.F. 100 are largely codified in Chapter 342 of the Minnesota Statutes. This chapter establishes OCM and gives it rulemaking authority, sets out licensing limits, codifies licensing requirements for all applicants, provides additional criteria for social-equity applicants, and requires OCM to hold a license lottery for social-equity applicants should there be more social equity applicants than social equity licenses available.

17. In July of 2024, the Cannabis Law was amended by H.F. 4757, which established License Preapproval criteria. The session law establishes procedures for a preapproval process “[p]rior to the adoption of initial rules” and allows OCM to “establish a license preapproval process.” Minn. Sess. Laws, ch. 121, art. II, § 148, subd. 1(a) (2024). This law provides that a license preapproval lottery “must include all qualified applicants seeking license preapproval for the license type and must be impartial, random, and in a format determined by the office.” Minn. Sess. Laws, ch. 121, art. II, § 148, subd. 6 (2024).

18. On July 31, 2024, OCM released a “First Draft of Proposed Cannabis Rules,” and sought “public feedback” from July 31, 2024, through August 30, 2024. These proposed rules do not discuss the social equity program or lottery.

19. As of November 20, 2024, OCM has not promulgated any rules or filed a notice of intent to adopt rules.

20. OCM issued a press release on June 18, 2024, that it would open a social-equity application verification process on June 24, 2024. *See* <https://mn.gov/ocm/media/news-releases/index.jsp?id=1202-628015>.

21. Applicants seeking license preapproval through the social equity pathway were required to submit general licensing applicant documentation, pursuant to Minn. Stat. § 342.14, subd. 1, in addition to proving social equity qualifications enumerated by Minn. Stat. § 342.17.

22. On July 10, 2024, OCM issued another press release announcing that the social equity business license preapproval window would run from July 24, 2024, through August 12, 2024. *See* <https://mn.gov/ocm/media/news-releases/index.jsp?id=1202-631637>. This announcement also stated that “[t]he first license lottery will be held this fall.”

23. OCM published on its website a set of guidelines for preapproval applicants, laying out the procedures for review and qualifications. *See* https://mn.gov/ocm/assets/Application%20Instructions%20and%20Criteria%20Matrix_tcm1202-631553.pdf.

24. In the guidelines, OCM discloses that it contracted with an organization called Creative Services, Inc. (“CSI”) to verify applicants’ social equity status and conduct a background check on applicants.

25. On information and belief, CSI reviewed and approved the social equity qualification for each Plaintiff.

26. In mid-October, OCM began delivering deficiency notices to social equity applicants, stating on its website that, “[o]n Oct. 16, OCM sent deficiency notices and requests for additional information to approximately 300 applicants” and that, at the time, “no final determinations have been communicated to applicants yet.” OCM is required by statute to deliver

deficiency notices and provide an opportunity for applicants to cure those deficiencies. *See* Minn. Stat. § 342.14, subd. 2(c) (“If the office receives an application that fails to provide the required information ... the office shall issue a deficiency notice to the applicant. The applicant may submit the required information or pay the required application fee within 14 calendar days from the date of the deficiency notice.”).

27. Each Plaintiff timely submitted social equity business license applications in August 2024. Plaintiffs’ applications each contained all the documents required in Minn. Stat. § 342.14, subd. 1.

28. Plaintiffs’ applications each correctly stated that the applicant had no partnership agreement and that the applicant did not have a promissory note, security instrument, or other similar instrument to disclose.

29. On November 18, 2024, Plaintiff Aranguiz received an email from OCM informing her that her “application for license preapproval has been denied as it did not adequately meet the requirement(s) as listed in the attached file.”

30. The “attached file” did not explain the basis for OCM’s decision. The file purported to provide an explanation with two reasons for the denial, both characterized as “Disclosure of Ownership and Control” that appeared as follows:

Document	Description	Status
Disclosure of Ownership and Control	If documentation does exist: Copies of any partnership agreement, operating agreement, or shareholder agreement are provided and comply with requirements of all relevant laws and Chapter 342, Laws of Minnesota 2024, chapter 121, article 2, section 76, and the chapter of Minnesota Statutes under which the applicant is organized.*	Fail
Disclosure of Ownership and Control	If documentation does exist: Copies of any promissory notes, security instruments, or other similar agreements are provided comply with requirements of all relevant laws and Chapter 342, Laws of Minnesota 2024, chapter 121, article 2, section 76, and the chapter of Minnesota Statutes under which the applicant is organized.*	Fail

31. In the case of Plaintiff Connolly, OCM failed to send any notice that her application had been denied, nor did OCM provide the basis for her denial, or instructions that she had the ability to seek a “review” but not an “appeal” of her application. But her application had been denied nonetheless, as indicated in the application portal.

32. On information and belief, on November 18, OCM sent denials with virtually identical language to hundreds of individuals who submitted preapplications to OCM. According to media reports, two-thirds of the applicants have received denials of entry into the lottery. *See* <https://www.minnpost.com/state-government/2024/11/two-thirds-of-minnesota-social-equity-cannabis-license-applicants-denied-for-inadequate-documentation-some-shenanigans/>.

33. Prior to sending the denial notices on October 18, 2024, OCM made no attempt to inform Plaintiffs there was a deficiency in their application or provide them with the opportunity to cure that deficiency. OCM never suggested that the existence of an option agreement could be grounds for rejection of an application.

34. Contrary to OCM's assertions in the media, Plaintiffs' applications are not the result of "shenanigans" or inadequate documentation. Plaintiffs truthfully responded that they had no partnership, operating, or shareholder agreements and further truthfully responded that they had no promissory notes or securities agreements. Plaintiffs did not conceal any notes or agreements. Each Plaintiff also truthfully indicated that they would retain full ownership interest in the entity that owned the license.

35. OCM's email to Plaintiffs states, "In accordance with Minnesota law, you may request a review of the application materials you submitted (called a records review) within seven days of the date of this notification." OCM subsequently clarified to Plaintiffs, and others, that the "record review" was merely an opportunity for applicants to review their own records. The process for "record review" did not involve any further review from OCM, much less provide a process for erroneous decisions to be reconsidered. OCM's records review does not provide a pathway for Plaintiffs to contest or appeal the OCM's determination denying Plaintiffs' applications and OCM will not allow Plaintiffs to supplement their application or contest OCM's denial of entry into the lottery.

36. OCM's email also states that, "Under Minnesota law, applicants who are denied entrance into the lottery are not eligible to appeal or request a hearing." Because Plaintiffs are not entitled to an appeal or hearing of their denial before OCM, the denial constitutes final agency action. *See* Minn. Sess. Laws ch. 121, art. II, § 148, subd. 11 (2024).

37. Plaintiffs sent a letter to OCM inquiring about their denials. In that letter, Plaintiffs disclosed the existence of a "Purchase Option Agreement" that gave a third-party, NXMN Partnership LLC, a future option to purchase some interest in the Plaintiffs' cannabis license. Part of the consideration for the option was that each applicant received "coordination and assistance

with respect to certain applications and filings in connection with the entity formation of the Company and the application for such Preliminary License Approval.”

38. The option agreement stated NXMN Partnership LLC could exercise the option at some point in the future subject to approval of state regulators. Because the option was contingent on state-regulator approval, NXMN Partnership could only exercise the option to purchase if OCM agreed the option was permitted by Minnesota law.

39. When Plaintiffs followed up on the letter to OCM, Interim Director Briner stated that she had seen it, along with Max Zappia, Chief Regulatory Officer at OCM, and directed Plaintiffs to speak with OCM’s Chief Counsel.

40. Remarkably, Plaintiffs have learned that OCM has, in fact, offered a right to appeal to some applicants. Plaintiffs are aware that at least one applicant was able to obtain reversal of the denial by contacting Director Briner. This applicant emailed Director Briner who forwarded the email to Chief Regulatory Officer Zappia. Mr. Zappia then called the applicant and told him the decision would be reversed. A short time later, the denial decision for this applicant was reversed.

41. Therefore, contrary to the email sent to all applicants, an appeals process does exist for erroneous denials—the process just exists only for applicants willing to ignore OCM’s statement in the emails, locate the contact information for the Interim Director, and pursue their request.

42. Even then, however, the appeal process is only available to some applicants. Plaintiff Aranguiz contacted Mr. Zappia and presented him with her knowledge that other applicants had been successful reversing their initial denials through this informal, ad hoc appeals process. Instead of engaging with Plaintiff Aranguiz like Mr. Zappia did with other applicants, he

referred her to speak with OCM's General Counsel. OCM has essentially created an appeals process selectively available to only some applicants who OCM chooses to assist after they contact Director Briner.

43. Unless Plaintiffs' applications are reconsidered and granted in advance of the lottery, Plaintiffs will be denied the opportunity to seek redress for OCM's application of undisclosed criteria and arbitrary action in denying Plaintiffs' applications.

COUNT I
VIOLATION OF MINN. STAT. §§ 14.001 ET SEQ.

44. OCM is a Minnesota state agency. State agencies must adopt, amend, suspend, or repeal its rules in accordance with the Minnesota Administrative Procedure Act. *See* Minn Stat. § 14.05, subd. 1. Pursuant to the APA, rules include "every agency statement of general applicability and future effect, . . . adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minn. Stat. § 14.02, subd. 2.

45. Courts will overturn agency decisions that are in excess of the statutory authority or jurisdiction of the agency, are made upon unlawful procedure, are unsupported by substantial evidence in view of the entire record as submitted, or are arbitrary or capricious.

46. OCM's decision is arbitrary and capricious and contrary to law in at least three ways. First, it was arbitrary and capricious for OCM to deny Plaintiffs' applications without explanation. The denial explanations contain either no explanation at all (because no explanation was provided to Plaintiff Connolly) or insufficient information (because they claim Plaintiff Aranguiz did not submit information that does not exist and is not required to exist).

47. Second, it was arbitrary and capricious and contrary to law for OCM to apply secret and undisclosed criteria to the applications. Although not explained in OCM's denial decisions,

OCM apparently believes that applicants are prohibited from selling options to purchase future ownership interests. But nothing in the statute says such an arrangement is prohibited. OCM's attempt to prohibit this structure is therefore outside its statutory authority.

48. Third, it is arbitrary for OCM to refuse a reconsideration process for some applicants, but then offer reconsideration—and reverse its decision—for other applicants. Contrary to what OCM has told Plaintiffs and other social equity applicants denied entry into the lottery, Minnesota law does not prohibit OCM from reconsidering or modifying its decision to reject an application.

49. The Court should reverse OCM's arbitrary process that only allows secret reconsideration. Plaintiffs are aware of at least one instance when an applicant was denied without adequate explanation, and the applicant emailed Interim Director Charlene Briner directly. Director Brinder responded, and forwarded the email to Max Zappia at the OCM. Mr. Zappia then reviewed the denial and reversed it.

50. Pursuant to Minn. Stat. § 555.01, Plaintiffs are entitled to a declaratory judgment that OCM's actions violate the Minnesota Administrative Procedure Act and an order enjoining OCM from taking further action in violation of the Act.

COUNT II
VIOLATION OF STATE CANNABIS LAW

51. Minn. Stat § 342.14, subd. 1 lists what a general cannabis license application must, at minimum, contain. Subdivision 1(b) notes that an applicant must provide “a disclosure of ownership and control identifying any true party of interest as defined in section 342.185, subdivision 1, paragraph (g).” A “[t]rue party of interest” is defined as “an individual who as an individual or as part of another business:”

(1) is a sole proprietor of a sole proprietorship;

- (2) is a partner in a general partnership;
- (3) is a general partner or limited partner in a limited partnership, a limited liability partnership, or a limited liability limited partnership;
- (4) is a member of a limited liability company or a manager in a limited liability company;
- (5) is a corporate officer or director or holds an equivalent title in a privately held corporation;
- (6) is a stockholder in a privately held corporation;
- (7) is part of a multilevel ownership structure;
- (8) has membership rights to a nonprofit corporation in accordance with the provisions of the articles of incorporation or bylaws for the nonprofit corporation;
- (9) has the right to receive some or all of the revenue, gross profit, or net profit from a cannabis business during any full or partial calendar or fiscal year; or
- (10) has the right to exercise control over a cannabis business.

52. Subdivision 1(b) also states that the “disclosure shall, at a minimum, include the following:” “(4) copies of any partnership agreement, operating agreement, or shareholder agreement; (5) copies of any promissory notes, security instruments, or other similar agreements.”

53. Minnesota’s cannabis laws do not define partnership agreement or promissory note. But these terms have been defined elsewhere in Minnesota law. The Minnesota Uniform Partnership Act defines a partnership as an “association of two or more persons to carry on as co-owners a business for profit.” Minn. Stat. § 323A.0101(8). Logically, a partnership agreement would be an agreement to establish co-ownership of an entity between partners. And Minnesota’s statutes concerning secured transactions define a promissory note as “an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay.” Minn. Stat. § 336.9-

102(65). An option or right to purchase an ownership interest does not meet either of these definitions.

54. Minn. Stat. § 342.14, subd. 3 provides nine limited reasons for which OCM may deny an application. They are as follows:

(b) The office may deny an application if:

- (1) the application is incomplete;
- (2) the application contains a materially false statement about the applicant or omits information required under subdivision 1;
- (3) the applicant does not meet the qualifications under section 342.16;
- (4) the applicant is prohibited from holding the license under section 342.18, subdivision 2;
- (5) the application does not meet the minimum requirements under section 342.18, subdivision 3;
- (6) the applicant fails to pay the applicable application fee;
- (7) the application was not submitted by the application deadline;
- (8) the applicant submitted more than one application for a license type; or
- (9) the office determines that the applicant would be prohibited from holding a license for any other reason.

55. If OCM fails to deny the application for one of those limited reasons, pursuant to subdivision 3(e), “[a]n applicant whose application is not denied under this subdivision is a qualified applicant.”

56. In its denial of Plaintiffs’ applications, OCM failed to identify which of the nine reasons under Minn. Stat. § 342.14, subd. 3 it was basing its decision, as it is required to do in the

preapproval process established by the legislature. *See* Minn. Sess. Laws, ch. 121, art. II, § 148, subd. 5(c) (2024) (“If the office denies an application, the office must notify the applicant of the denial and the basis for the denial.”).

57. The legislature’s preapproval process mandates that OCM include all qualified applicants in the lottery: “The lottery *must* include all qualified applicants seeking license preapproval for the license type and must be impartial, random, and in a format determined by the office.” Minn. Sess. Laws, ch. 121, art. II, § 148, subd. 6(a) (2024) (emphasis added).

58. OCM violated this provision by failing to include Plaintiffs in the lottery, as they were qualified applicants under the statute.

59. OCM’s ad hoc and opaque attempt at licensing procedures, including its inconsistent process for informing Plaintiffs of their denials, its inconsistent provision of reasons for denial, and its inconsistent and inequitable informal process for reconsideration—as experienced by another applicant whose denial was overturned ad hoc—are not in compliance with the cannabis statutes or the Minnesota Administrative Procedure Act, which prohibits arbitrary and capricious decision-making.

60. Accordingly, Plaintiffs seek a writ of mandamus compelling OCM to comply with both the cannabis statutes and the Minnesota Administrative Procedure Act. Further, Plaintiffs seek that the writ of mandamus compel OCM to adequately apply the cannabis statutes to Plaintiffs’ applications.

RELIEF REQUESTED

Wherefore, Plaintiffs requests the following relief:

1. An emergency Order compelling OCM to halt social equity lottery proceedings until the resolution of this litigation;

2. An Order reversing OCM's arbitrary and capricious decision denying Plaintiffs the chance to participate in the social equity lottery;

3. An Order requiring OCM to provide Plaintiffs the opportunity to cure any identified deficiencies in their applications and contest any disputed deficiencies;

4. An Order that Plaintiffs are entitled to an award of attorney fees, costs, and disbursements incurred in this action; and

5. An Order for such other relief as the Court deems just and equitable.

Dated: November 21, 2024

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/David W. Asp

David W. Asp (#344850)

Laura M. Matson (#396598)

Michael J.K.M. Kinane (#504621)

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

dwasp@locklaw.com

lmatson@locklaw.com

mjkmkinane@locklaw.com

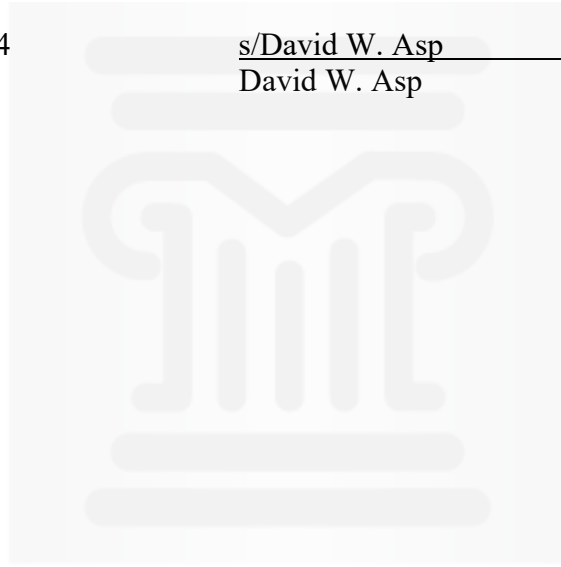
ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT

The party upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledges that costs, disbursements, and reasonable attorney fees and witness fees may be awarded to the party against whom the allegations in this pleading are asserted, pursuant to Minnesota Statute § 549.211.

Dated: November 21, 2024

s/David W. Asp
David W. Asp



MINNESOTA
JUDICIAL
BRANCH