

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF RAMSEY****SECOND JUDICIAL DISTRICT**

Court File:

Case Type:

Northern Illusion LLC, Hendo Industries LLC,
Thrifties LLC, Milstagams LLC, Better Bud
Co LLC, Mohamed Abdi,

Plaintiffs,

vs.

Minnesota Office of Cannabis Management,
Charlene Briner, in her capacity as Interim
Director of the Minnesota Office of Cannabis
Management, and Attorney General Keith
Ellison, in his official capacity,

Defendants.

COMPLAINT**INTRODUCTION**

Plaintiffs bring this action seeking: (1) a declaration that the Defendant Minnesota Office of Cannabis Management (“OCM”) has improperly, arbitrarily, and capriciously denied licensing applications because the statutory requirements regarding application denials were not followed; and (2) an emergency temporary injunction to prohibit OCM from holding the lottery for social equity applicants that is currently scheduled to be held on November 26, 2024, and (3) a permanent injunction to prohibit OCM from processing new applications until a review process has been established, the guidelines OCM uses to make determinations regarding denials is made available to the public, and clarification is made regarding the current statutory ambiguity between mandatory deficiency notices and permissive requests for information.

This Complaint does not seek to challenge the underlying Social Equity application process or to negatively impact those that have successfully received a license preapproval. Rather, this

Complaint seeks to invalidate OCM's unprecedented efforts to improperly alter the results of the lottery through wide-spread and arbitrary denials of the overwhelming majority of the total applications received by the office. The Defendant has stripped the Social Equity application round of its very essence, which was to provide a head-start for select groups of applicants including military veterans and socially disadvantaged individuals, by wiping out 2/3 of the entire pool in one fell swoop. To be clear, we do not assert that the vetting process should be easy; rather, it must be transparent, clearly communicated, and structured to eliminate opportunities for corruption and arbitrary governmental malfeasance.

PARTIES

1. The Plaintiffs bringing this suit are individuals and businesses that have been impacted by OCM's actions.
2. Plaintiff Northern Illusion, LLC, owned by Shekhar Nepal, was an applicant for a Cannabis Mezzobusiness license whose application was denied.
3. Plaintiff Hendo Industries LLC, owned by Todd Henderson, was an applicant for a Cannabis Microbusiness license whose application was denied.
4. Plaintiff Thrifties LLC, owned by Mason Alt, was an applicant for a Cannabis Microbusiness license whose application was denied.
5. Plaintiff Milstagrams LLC, owned by Sam Milstein, was an applicant for a Cannabis Transport license whose application was denied.
6. Plaintiff Better Bud Co LLC, owned by Ryan Appleby, was an applicant for a Cannabis Microbusiness license whose application was denied.
7. Plaintiff Mohamed Abdi was an applicant for a Cannabis Retail license whose application was denied.

JURISDICTION AND VENUE

8. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. §555.01 and to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.
9. Venue is proper in this district under Minn. Stat. § 542.03 and Minn. Stat. § 542.09 because Defendant Minnesota Office of Cannabis Management is found within this district, and the cause of action, or some part thereof, arose in this district.

FACTS

STATUTORY CREATION

10. The Minnesota Office of Cannabis Management is a recently created governmental agency that is governed by Minnesota Statute 342 *et. seq.*
11. One of the six enumerated duties is to “prioritize growth and recovery in communities that have experienced a disproportionate, negative impact from cannabis prohibition.” Minn. Stat. §324.02, subd. 1.
12. To that end, a class of Social Equity Applicants was created, which would constitute the first round of license applicants.
13. The prerequisites to be a Social Equity Applicant are enumerated in Minn. Stat. §342.17.

STATUTORY REQUIREMENTS OF OCM

14. There are six criteria OCM is required to review in completed applications. Minn. Stat. §342.18, subd. 3(a).
15. OCM was required to “establish policies and guidelines, which the office must make available to the public, regarding the minimum qualifications in each category and the criteria that the office uses to determine whether an applicant meets the minimum qualifications in each category.” Minn. Stat. §342.18, subd. 3(b).

16. OCM published a document entitled “Cannabis Business License Preapproval Application Review and Qualifications Guideline.” (“Guidelines”, a copy of which is attached as Exhibit A).
17. Under the Guidelines, OCM stated that it may deny an application if: “[t]he application is incomplete or deemed unqualified by the standards of the review.” Exhibit A, page 3.
18. The referenced “standards of review” are not published in the Guidelines and have not been found elsewhere.
19. If an application did not provide the required information or pay the applicable application fee, “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.” Minn. Stat. §342.14, subd. 2(c).
20. “The office may request additional information from any applicant if the office determines that the information is necessary to review or process the application. If the applicant does not provide the additional requested information within 14 calendar days of the office's request for information, the office may deny the application.” *Id.* subd. 3(d).
21. “If the office denies an application, the office must notify the applicant of the denial and the basis for the denial.” *Id.* subd. 3(c).

SOCIAL EQUITY LICENSING

22. Individuals seeking to obtain a license under the Social Equity avenue are required to obtain preapproval of their status as Social Equity Applicants before becoming eligible to apply for a license. Following the verification of their status as a Social Equity Applicant, those individuals were allowed to submit licenses. Minn. Stat. §342.14, subd. 1c.

23. While applicants may reasonably rely on clear, objective criteria to assess their status as Social Equity Applicants, the same level of clarity is absent concerning the six categories of review outlined in Minn. Stat. §342.17, subd. 3(a).
24. In accordance with Minn. Stat. §342.18, subd. 3(b), the policies and guidelines governing the application process must be made publicly available. However, the published document, *Cannabis Business License Preapproval Application Review and Qualifications Guideline*, offers no greater specificity or insight into these policies and guidelines than the statute itself. Furthermore, no other substantive documentation appears to delineate the criteria in a meaningful way.
25. This issue is exacerbated by the fact that the OCM may request additional information from any applicant if it determines such information is necessary for the review process. However, there are no published guidelines associated with this procedure. This provision for additional documentation further compounds the uncertainty of the licensing application process and creates the potential for cherry-picking by the OCM.
26. A qualified applicant is one “whose application is not denied” under Minn. Stat. §324.14 Subd. 3.
27. If a qualified applicant is not selected in the social equity lottery, “the office must include the social equity applicant in the pool of applicants for licenses of that type that are made available to all applicants.” *Id.* Subd. 3(d).
28. As noted, the OCM is required to provide a basis for denial, which is beneficial as it promotes transparency. However, what is of even greater importance is proactive transparency, which is currently lacking.

29. Because the Plaintiffs were improperly denied, they are not deemed a “qualified applicant,” their applications will not be included in the next round of applications, and the application fee is lost.

COUNT I

JUDGMENT UNDER THE UNIFORM DECLARATORY JUDGMENTS ACT, MINN. STAT. §555

30. Plaintiffs incorporate by reference the preceding allegations.

31. Plaintiffs are adversely affected by the OCM’s improper, arbitrary, and capricious approach to vetting licensing applications.

32. Plaintiffs assert that the Guidelines do not adequately and completely fulfill the OCM’s obligation to publish clearly outlined policies and guidelines regarding the licensing criteria outlined in Minn. Stat. §342.18, subd. 3(a).

33. Accordingly, Plaintiff is entitled, under Minn. Stat. §555.02, to seek a declaration from this Court that the current vetting process established by the OCM is invalid.

COUNT II

REQUEST FOR TEMPORARY INJUNCTION

34. Plaintiffs incorporate by reference the preceding paragraphs.

35. Plaintiffs have shown a likelihood of success on the merits.

36. The number of Social Equity licenses are capped by statute. As such, Plaintiffs will be irreparably harmed if the Defendant is not enjoined during the pendency of this lawsuit.

37. Indeed, Plaintiffs are already suffering irreparable harm because of the impending lottery on November 26, 2024 with no avenue for recourse.

38. A temporary injunction would advance the public interest.

39. There would be no burden on the Court in imposing a temporary injunction.

40. Plaintiffs are entitled to a temporary injunction, halting the November 26, 2024 lottery and enjoining the OCM from issuing licenses at this time.

COUNT III

REQUEST FOR PERMANENT INJUNCTION

41. Plaintiffs incorporate by reference the preceding paragraphs.
42. The arbitrary and capricious denials by OCM are invalid and preempted by state law.
43. Plaintiffs seek the entry of a permanent injunction, enjoining OCM from going into effect or being enforced.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue an Order pursuant to the Uniform Declaratory Judgments Act, Minn. Stat. § 555, declaring that the actions taken by of the Minnesota Office of Cannabis Management is invalid, void, and unenforceable;
2. Grant a temporary restraining order under Minn. R. Civ. P. 65.01 that enjoins the Minnesota Office of Cannabis Management from holding the lottery until the matter is heard on the merits;
3. Award Plaintiffs their costs of bringing this suit under Minn. Stat. § 555.10; and
4. All other relief that the Court deems just and equitable.

Dated: November 22, 2024

NORTH STAR LAW GROUP PLLC

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ACKNOWLEDGMENT

The undersigned attorneys hereby acknowledge that sanctions, including costs, disbursements, and reasonable attorneys' fees may be awarded pursuant to Minn. Stat. § 549.211 to the party/parties against who the allegations in this pleading are asserted.

/s/ Courtney J. Ernston

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