

**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION**

IN THE MATTER OF:

COASTAL FARMS WELLNESS CENTER, INC.

RESPONDENT.

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DBR No. 21OCR001

DIRECTOR'S DECISION AND ORDER

I. INTRODUCTION

On January 7, 2021, Elizabeth M. Tanner, Director of the Department of Business Regulation, issued an Order to Show Cause Why Request to File an Application After the Application Submission Deadline Should Not be Denied and Notice of Pre-Hearing Conference to Coastal Farms Wellness Center, Inc. ("Coastal Farms or Respondent") which initiated this hearing. Pursuant to that Order a prehearing conference was held on January 21, 2021 at 11:00 am. At that prehearing conference Counsel for the Office of Cannabis Regulation ("OCR") and Coastal Farms agreed to treat this matter as a motion for excusable neglect pursuant to Superior Court Rules of Civil Procedure Rule 60. Counsel for the parties also agreed to file stipulated facts, file simultaneous memorandum, that the matter could be decided upon memorandum and that an in person or virtual hearing was not needed. Stipulated facts were filed on January 29, 2021. The parties filed memorandums simultaneously on February 5, 2021. The Director has considered the stipulated facts and exhibits and the memoranda submitted by both parties and hereby issues this decision.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws Chapters 21-28.6; 42-14 and 42-35.

III. ISSUE

Whether leave to file an Application for Zone 5 should be granted as a result of excusable neglect in failing to file by the established deadline?

IV. MATERIAL FACTS

On July 17, 2020, the Department announced an “application period” for the submission of applications for six new Medical Marijuana Compassion Centers in six different geographic zones. The application period was from 10:00 am on July 17, 2020, through 3:00 pm on December 15, 2020. DBR posted on its website that it was the “Applicant’s responsibility to ensure that its application is complete and submitted before the close of the Application Submission Deadline.” DBR also posted that “The Department will not accept or consider applications tendered after the Application Submission Deadline.

On November 18, 2020, Respondent retained attorney Lisa Holley to assist in the submission of their compassion Center Applications. Respondent desired to file two applications for two different pieces of property. The first of those was in Exeter which is in Zone 5 and the second in Warwick which is Zone 4.

It was her intent to file

both applications at one time and when she arrived at the Departments' offices close to the deadline, she realized that she had brought only one of the applications and did not have enough time to retrieve the other application and return to the Departments' offices. The

[REDACTED]

The simultaneous briefs filed both the Respondent and OCR cited to case law interpreting Rule 60. OCR argued that the facts were not sufficient to allow for a late filed application. Respondent argued that [REDACTED] provided sufficient excusable neglect to allow for a late filing of her clients' application.

V. DISCUSSION

Superior Court Rule of Civil Procedure Rule 60(b) provides in relevant part:

(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

...

(6) Any other reason justifying relief from the operation of the judgment.

...

The Rhode Island Supreme Court has had a number of occasions to consider the application of Rule 60(b) and the results of those challenges have been very fact specific. The Court has found factual situations in which it has determined that relief from a deadline was justified (*See e.g. Iddings v. McBurney* 657 A.2d 550 (R.I. 1995) (attorney's medical disability and extenuating circumstances of sufficient significance)) and other factual situations in which the relief was not justified. (*See e.g. Bailey et al v. Algonquin Gas Transmission Co, et al* 788

A.2d 478 (R.I. 2002) (alcoholism alone was not enough to constitute excusable neglect); *Bloom v. Trudeau* 266 A.2d 417 (1970) (increased workload of “claims girl” without explicit connection to facts does not constitute “excusable neglect”).)

In this case the stipulated facts establish that Attorney Holly [REDACTED]

[REDACTED] Respondent’s application for Zone 5 was not filed in a timely manner.

Respondent hired Attorney Holly in late November approximately one month before the filing deadline. [REDACTED] She had taken actions to have other attorneys cover some of her cases but did not make such arrangements for this matter. There is no explanation provided, however, as to why Respondent waited four months after the notice to even hire Attorney Holly or why the application had not been filed earlier than the last day of a five-month application period. By waiting until the day of the deadline in order to file the application Respondent created the situation from which it now asks to be excused. The Department does not believe that Rule 60 provides relief under such circumstances.

VI. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties stipulated to, and the Director accepts the following facts:

1. Pursuant to § 21-28.6-12(c) and §1.2 of the Regulations, the Department established a five-month application period from July 17, 2020, through 3:00 p.m. on December 15, 2020 (the “Application Period”) for the submission of applications for six new compassion center licenses in six geographic zones to be selected through a lottery process.

2. On July 17, 2020, the Department posted on its website a notice announcing the opening of the Application Period along with the form Application, which states:

The period for submission of applications will be from 10:00 a.m. on July 17, 2020, through 3:00 p.m. on December 15, 2020 (the "Application Submission Deadline").

It is Applicant's responsibility to ensure that its application is complete and submitted before the close of the Application Submission Deadline.

The Department will not accept or consider applications tendered after the Application Submission Deadline.

3. At the close of the Application Period, the Department had received 45 compassion center license applications, including one application from Respondent Coastal Farms Wellness Center Inc. for Zone 4 (the "Coastal Zone 4 Application"). The Coastal Zone 4 Application was submitted to the Department on December 15, 2020, prior to the Application Submission Deadline, in person by Respondent's legal counsel, Lisa S. Holley, Esquire. Attorney Holley received a receipt for the delivery of Coastal's Zone 4 Application (Exhibit 6). At that same time, Attorney Holley submitted two applications for another applicant, Mammoth Health and Wellness, in Zone 4 and in Zone 5.

4. On December 15, 2020, between 2:30 p.m. and 3:00 p.m., Associate Director Pamela Toro received a call on her cell phone from Attorney Holley. Attorney Holley stated that she was at Staples copying applications, [REDACTED] and that she was concerned she would not make it to DBR on time. Because Attorney Holley is an attorney who represents several licensed cultivators in matters before the Department, Associate Director Toro is familiar with Attorney Holley. Associate Director Toro was aware that [REDACTED]

[REDACTED] Associate Director Toro reminded Attorney Holley that the Application Period closed at 3:00 p.m. and that Attorney Holley could deliver the application(s) to the DBR staff at either DBR location: Pontiac Ave. or Jefferson Blvd. After Attorney Holley noted that she would go to the Jefferson Blvd. location, [REDACTED]

5. On December 15, 2020, Ms. Erica Ferrelli observed that Attorney Holley arrived at Jefferson Blvd. shortly before 3:00 p.m. and delivered several applications. [REDACTED]

[REDACTED]

6. On December 15, 2020, in the evening hours, Associate Director Toro called [REDACTED]

[REDACTED]

[REDACTED] Attorney Holley stated that she had not dropped off one of the applications she had intended to and asked Associate Director Toro if she could submit it based on the circumstances. Associate Director Toro told Attorney Holley she could submit such a written request to the Department.

7. On December 16, 2020, Attorney Holley sent Associate Director Toro an e-mail (Exhibit 4), with an attached photograph (Exhibit 3); both a yellow bubble mailer envelope titled "Coastal Farms Original Exeter" and Check No. 59248 from People's Credit Union in the amount of ten-thousand dollars (\$10,000) (Exhibit 7) can be seen in the photograph.

8. By letter dated December 19, 2020 ("Letter"), Attorney Holley requested that the Department permit the filing of an application by Coastal Farms Wellness Center Inc. for Zone 5 (a "Coastal Zone 5 Application") after the Application Submission Deadline (Exhibit 1). The Department does not contest any of the facts contained in the Letter. The Letter (page 3, ¶1) references a Staples receipt (Exhibit 5). [REDACTED]

9. Respondent hired Attorney Holley for her assistance with the completion and submission. The Director makes the following conclusions of law:

1. The circumstance of December 15, 2020, do not constitute excusable neglect pursuant to Superior Court Rules of civil Procedure Rule 60(b) that would allow for the late filing of Respondent's Zone 5 application.

2. [REDACTED]

[REDACTED] the fact remains that she was hired to represent Respondent just a month prior to the deadline for applications and no explanation was provided for why Respondent waited until the final day of a five month application period to file the application.

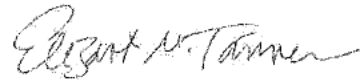
3. Since Respondent could have avoided waiting until the date of the deadline to deliver the application it has not established the facts needed to establish "excusable neglect" purpose to Rule 60.

VII DECISION AND ORDER

After consideration of the facts and evidence the Director orders as follows:

- a. That Respondent's Motion be denied in all aspects; and
- b. That the Coastal Farms Compassion Center Application for Zone 5 not be accepted.

Dated: February 26, 2021



Elizabeth M. Tanner, Esq.
Director

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON APPROPRIATE TERMS.

CERTIFICATION

I hereby certify on this 26 day of February, 2021, that a copy of the within Director's Decision and Order was sent by electronic mail and first class mail, postage prepaid to the following: Lisa Holly, Esquire at 536 Atwells Ave, Providence, RI 02909 and at lisa@lisaholleylaw.com and by electronic mail to Pamela Toro, Esquire and Sara Tindall Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI 02920 at pamela.toro@dbri.gov and sara.k.tindallwoodman@dbri.gov .