

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE, BLDG. 69-2
CRANSTON, RHODE ISLAND 02920

In the Matter of:

Hope Harvest, LLC

Respondent.

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DBR No.: 22OCR001

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause Why Respondent's Medical Marijuana Cultivator Extension Requests and Renewal Application Should not be Denied, Why Respondent's Medical Marijuana Cultivator License should not be Revoked, Notice of Hearing and Appointment of Hearing Officer ("Order to Show Cause") issued by the Department of Business Regulation ("Department") to Hope Harvest, LLC ("Respondent") on February 4, 2022. Pursuant to R.I. Gen. Laws § 21-28.6-1 *et seq.* and the *Rules and Regulations Related to the Medical Marijuana Program Administered by the Office of Cannabis Regulation at the Department of Business Regulation*, 230-RICR-80-05-1 ("Regulation"), the Respondent was issued a medical marijuana cultivator license ("License") on December 29, 2020. The parties agreed that this matter could be decided on an agreed statement of facts and exhibits, and briefs. The parties were represented by counsel and briefs were timely filed by June 27, 2022.

II. JURISDICTION

The administrative process was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, the Regulation, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Respondent's Marijuana Cultivator Renewal Application Should be Denied and/or Respondent's License be revoked or declared void and/or expired.

IV. MATERIAL FACTS

The parties filed an agreed stipulation of facts ("ASOF")¹ and exhibits as follows:

1. The Respondent submitted its Medical Marijuana Cultivator Application, Application No. MMP CV 0094 ("Application"), on April 28, 2017. Exhibit One (1).
2. Shannon Senior is the Respondent's sole owner pursuant to the Respondent's Form 2 Interest Holder Disclosure Filing ("Form 2") submitted to the Department. *Id.*
3. On or about December 29, 2020, the Department issued the Respondent its Class B Cultivator License, and pursuant to § 1.3(C)(2) of the Regulation, the Respondent was afforded six months (*i.e.*, until June 29, 2021) to commence licensed cultivator activities. Exhibit Two (2).
4. On or about April 2, 2021, the Respondent's former counsel contacted the Department stating that they were recently retained to assist the Respondent with "a very sensitive and serious issue." Exhibit Three (3).
5. On or about April 6, 2021, the Department issued a letter to the Respondent requesting details surrounding the proposed loan and investor and related documentation. Exhibit Three (3).
6. On or about April 12, 2021, the Respondent's former counsel provided the Department with the information and documentation as requested in ¶ 5 including a letter dated April 12, 2021 signed by Shannon Senior addressed to the Department that states in part:

¹ See pre-hearing stipulation filed on May 27, 2022. While the Respondent's attorney did not sign the stipulation, he indicated to the Department's attorney by email dated May 20, 2022 that the proposed stipulated facts were "acceptable." See the Department's filing of May 27, 2022. The Respondent did not object to the filing of the stipulation.

On August 19, 2019, I retained the services of Attorney Robert Flaherty to assist me with completing the DBR licensing process. He has represented me and my company since that time.

In October 2020, after having difficulty raising funds for the property lease and the buildout of the Newport property, my friend and Godfather to my daughter, Christopher McGoff agreed to provide me funding by way of a no interest loan. I asked my attorney if that loan needed to be disclosed to RI Department of Business Regulation, and I was told by Mr. Flaherty that it did not have to be disclosed. Mr. Flaherty explained that because Mr. McGoff would not be getting any financial benefit from the loan, I did not have to inform DBR or seek approval to accept the loan.

Beginning October 2, 2020, Mr. McGoff began to make wire transfers of his funds into my Peoples Credit Union account. These wire transfers were of various amounts, with the largest amounts being \$35,000 each. All totaled, McGoff wired \$150,000 to my Peoples Credit Union account.

...

At some point Mr. McGoff decided that he wanted to apply for a Compassion Center license using the address of Hope Harvest, 29 JT Connell Highway. He retained the legal services of my attorney, Mr. Flaherty and also Attorney Philip Gasbarro a legal associate of Mr. Flaherty.

On November 2, 2020, Mr. McGoff directed me to create an entity, Eagle Holdings LLC, to act as a management company for the purposes of the Compassion Center application. McGoff later obtained an American Express account in the name of Eagle Holdings LLC. He gave one card to me and one to Mr. Napoleon Brito, who was hired at the suggestion of Attorney Flaherty. The AmEx cards were to be used to purchase equipment for HH [*i.e.*, "Hope Harvest"] buildout. Approximately \$241,000 in charges were posted on the AmEx though not all of these expenses were attributable to Hope Harvest purchases.

On December 8, 2020, Mr. Flaherty established Atlas Enterprises, Inc. as a nonprofit, to apply for the Compassion Center license. . . I signed a subletting agreement to sublease the Newport property to Atlas. The agreement was signed by Attorney Philip Gasbarro as the President of Atlas.

At some point, Mr. McGoff brought in Jan Carlos Byl to be a part of the Compassion Center application. . . In December 2020, McGoff began to exercise control over HH. He spoke with me about the possibility of merging HH into the Compassion Center should it be awarded to Atlas.

McGoff directed Mr. Brito and Mr. Byl to take over the oversight and operations management of HH. McGoff directed Attorneys Flaherty and Gasbarro to draft up employment agreements for Brito and Byl. I was directed to make payments from my Peoples account to Brito. I spoke with my attorneys about the situation as it was unfolding and my concern that I was losing control of HH.

...

In March 2021, McGoff insisted that we sign documents to

memorialize the loan to HH. He submitted documents that changed the terms of our loan agreement. No longer was the loan interest-free, as we had previously agreed. McGoff was now asking for me to sign an agreement that I would exchange 70% of my interest in HH and pay 8% interest on the amount he loaned to me. He also asked that I sign a Membership Interest Purchase Agreement in which assigned McGoff 60% and Jan Carlos Byl 10% of Hope Harvest. This agreement would mean that I would only be able to retain 20% of my LLC. At the same time, McGoff wanted me to sign an Employment Agreement whereby Hope Harvest would hire me as "Director of Communications and Outreach" with an annual salary of \$65,000.

I indicated to McGoff and Attorneys Flaherty and Gasbarro that I would not sign the documents and that I did not want to enter into these agreements to sign away a majority of my company. After notifying McGoff, on March 18, 2021, that I would not sign the agreements as written, McGoff sent me an email recalling his loan, and demanding repayment in full be made within 24 hours. He also demanded 15% APR interest until the loan was paid in full. He threatened that if I defaulted on the loan, he would take all steps to seize assets of the company, seize the cultivation license, and notify DBR of loan default. At the time I felt I had no other alternative but to succumb to McGoff's demand. I signed the documents via docusign on March 19, 2020 after being placed under duress by the threats. Exhibit Four (4).

7. Any Membership Interest Purchase Agreement identified in ¶ 6 reflecting a corporate change would have needed Departmental preapproval under § 1.3(H) of the Regulations, which never occurred.
8. On or about April 15, 2021, the Respondent's former counsel requested the Department's approval of a separate loan from a different entity while the Department reviewed the initial loan request. Exhibit Five (5).
9. On or about April 15, 2021, the Department informed the Respondent's counsel that it would not approve the proposed transaction identified in ¶ 8 because the information and documentation provided "raise[d] serious concerns." *Id.*
10. On or about April 19, 2021, the Department received, via hand-delivery at its 1511 Pontiac Avenue offices, a 79 page document, purportedly submitted by the Respondent, which contained, in part, two (2) variance requests to: (1) change the Respondent's mailing address, and (2) change the Respondent's governance/ownership structure. Exhibit Six (6).
11. The document described in ¶ 10 was submitted by Jan Carlos Byl whose purported affiliation with the Respondent was "Managing Member." *Id.*
12. The document described in ¶ 10 contained a request to change the Respondent's

registered contact person from “Shannon Senior” to “Jan Carlos Byl.” *Id.*

13. On or about April 19, 2021, the Respondent’s former counsel e-mailed the Department stating that “[her] client, the licensee did not submit any paperwork to DBR” and that “[i]f there has been a new Form 2 submitted, it was not authorized by Shannon Senior.” Exhibit Seven (7).

14. On or about April 27, 2021, the Respondent’s former counsel e-mailed the Department stating:

I have been asked to inquire as to whether OCR would allow the proposed investors to place money in escrow as Hope Harvest awaits determination from OCR on the status of the license. As you are aware, HH has not moved forward with any further activity since we notified DBR of the unreported investment on April 2, 2021. Exhibit Eight (8).

15. On or about May 13, 2021, the Respondent’s former counsel e-mailed the Department about a proposed majority interest purchaser, Med Leaf. Exhibit Nine (9).

16. On or about May 14, 2021, the Department responded to the Respondent’s former counsel’s May 13, 2021 e-mail stating in part:

In addition to the noncompliance issues as you’ve noted, the information we received from you and others indicates conflicting claims and assertions. It is unclear how the licensee could pursue additional interest holder changes in this context.

The Department is aware that Hope Harvest has been notified of potential legal action in Superior Court. To the extent any court proceedings have been or are initiated, please inform the Department. Exhibit Ten (10).

17. On or about May 14, 2021, the Respondent’s former counsel e-mailed the Department stating that the Respondent has not been notified of a lawsuit but also stated in part:

Mr. McGoff has retained Attorney Lawrence Goldberg who affixed to the property the attached letter. Additionally, Mr. McGoff has been threatening Ms. Senior that should she not allow him access to the property he will cause additional harm with the DBR and otherwise. He has called her repeatedly asking her to speak to DBR on his behalf, stating the only way to salvage her license is to present a united front. I have advised her to decline any of his calls.

It is for these reasons and others, as illustrated in our submissions to OCR, that Ms. Senior wishes to sever any ties with McGoff and his associate Byl. Exhibit 11.

18. The letter from Attorney Lawrence Goldberg, identified in ¶ 17, dated May 6, 2021, states in part:

Dear Ms. Senior:

I am writing to you at this time on behalf of Hope Harvest, LLC as well as Jan Carlos Byl and Christopher J. McGoff with respect to the agreements of March 16, 2021 which you entered into with them.

This will inform you that due to your non-cooperation not only has the enterprise in which you agreed to participate been unable to move forward but the cooperation of the Department of Business Regulation (Cannabis Regulation) is problematical because it is not presently approving the licenses in which you agreed to participate and assist with. These are the agreements that were utilized by you to obtain substantial funds from my clients.

Your failure to cooperate and in fact comply with the agreements that you executed on March 16, 2021 has caused and is causing substantial damage. Time is obviously very short in this matter as the harm to my clients and the LLC is ongoing and you are aware of it. Exhibit 11.

19. On or about May 24, 2021, the Respondent's former counsel e-mailed the Department with copies of two letters written by Attorney Lawrence Goldberg addressed to the Respondent. Exhibit 12.

20. The first letter identified in ¶ 19, dated May 18, 2021 stated in part:

It was a pleasure speaking with you yesterday afternoon regarding the above mentioned parties. You have indicated to me and please feel free to correct me if I am mistaken that you are counsel for the Hope Harvest, LLC as well as Ms. Shannon Senior a member or former member of Hope Harvest LLC.

I have explained to you that I believe my client Mr. McGoff has paid or been caused to pay at the direction of your client almost half a million dollars with respect to the 29 JT Connell Hwy Newport, RI 02840 premises and that he is desirous to have access and control of said premises as the proper party to be in control of Hope Harvest, LLC.

You have indicated to me that that is not possible not because of any unwillingness of your client but because it is not in conformity with DBR regulations regarding Cannabis cultivation. I believe you have also indicated that pursuant to the agreement that Ms. Senior signed that she is fully cooperating with the Department of Business Regulations [*sic*] in obtaining approvals and such certifications or licenses as are necessary from DBR for Mr. McGoff and his associate to commence operations in both the cultivation area and the dispensary area of the business. Again if I am incorrect please feel free to advise me.

It is not clear to me whether or not you have seen the documents that Ms. Senior signed and I would appreciate it in your reply if you indicate whether or not you have such documents and if you have whether or not your client is now intending to repudiate them.

If my correspondence is unclear in any way please feel free to contact me by telephone or by reply in order that I might attempt to further illuminate you regarding my clients' concerns. *Id.*

21. The second letter identified in ¶ 19, dated May 20, 2021 stated in part:

[A] preliminary hearing is taking place with respect to the business between your clients and my clients at the Department of Business Regulation on June 3rd, 2021 with respect to the denial of the application of Atlas Enterprises Inc.

I believe a fair reading of the documents that have been signed call for nothing less than a full throated endorsement and cooperation by your clients with the efforts of my clients to obtain appropriate licenses with your clients' assistance.

I believe it is also evident that should these things not take place as a result of the failure of your clients to provide such assistance and cooperation my clients will suffer substantial damages as a result of your clients' failure to abide by the signed agreement. Exhibit 12.

22. On or about June 18, 2021, Christopher McGoff and Jan Carlos Byl initiated a lawsuit against Hope Harvest, LLC and Shannon Senior alleging breach of contract. *Christopher McGoff & Jan Carlos Byl v. Shannon K Senior & Hope Harvest, LLC*, PC-2021-04075. Exhibit 13.

23. On or about June 29, 2021, Attorney Mark C. Hamer contacted the Department stating in part:

I am counsel to Shannon Senior and Hope Harvest LLC. The LLC holds a cultivator's license that is soon due to expire. Is the Department willing to grant an extension of time before the license expires? This will allow for negotiation of a prospective reallocation of ownership in the LLC. Exhibit 14.

24. On or about July 6, 2021, the property owner of 29 JT Connell Highway in Newport, commenced a commercial property eviction action for non-payment of rent against the Respondent in the Rhode Island Superior Court, *Jim Carnegie, Inc. v. Hope Harvest, LLC*, 2CA-2021-00546. The Court entered judgment for possession and damages of \$36,977.42 in favor of plaintiff on August 23, 2021. Exhibit 15.

25. On September 9, 2021, a vendor commenced a contract collection action against the Respondent alleging nonpayment of \$50,967.09 due for alarm services at Respondent's former premises, *Custom Systems, LLC d/b/a AAA Alarms & Fire Protection v. Hope Harvest LLC*, NC-2021-0296. Exhibit 16.

26. On or about October 29, 2021, the Department received a voicemail from Attorney Jennifer Wilson from the law firm of Parker Keough stating that Hope Harvest is

Attorney Wilson's client and that she was calling to inquire about a variance request for Hope Harvest. Exhibit 17.

27. On or about October 30, 2021, the Department e-mailed Attorney Hamer referencing the voicemail identified in ¶ 36 which contradicted the Department's understanding based on Attorney Hamer's June 28, 2021 correspondence to the Department. *Id.*
28. On or about October 31, 2021, Attorney Hamer forwarded the Department an e-mail from Shannon Senior in response to the Department's October 30, 2021 e-mail stating in part:

Wow. That must be the firm Parker Keough LLP that is now representing Chris and Jan for the complaint. I have not had any contact with them or any other attorneys. They are either misrepresenting to DBR their relationship with Hope Harvest (me) as a client, or Chris and Jan are misrepresenting themselves as Hope Harvest to their firm. *Id.*

29. On or about December 14, 2021, Attorney Wilson called the Department asking how she would go about submitting a change of counsel to become Hope Harvest's primary attorney. Exhibit 18.
30. On or about December 14, 2021, the Department e-mailed Attorney Wilson stating:

Dear Jennifer,

Our administrator advised that you left another voice mail inquiring about counsel for Hope Harvest. As I indicated when I called you in November as to this same request, the Department is informed that Hope Harvest is represented by Mark Hamer, Esquire. Here is Attorney[] Hamer's contact information, the same information that I relayed to you then:

Mark@MCHamer.com

Phone number (401) 400-2502

You should contact Attorney Hamer directly. *Id.*

31. On or about December 14, 2021, Attorney Ken Parker from the law firm of Parker Keough responded to the Department's December 14, 2021 e-mail stating that the litigation between Shannon Senior and Chris McGoff has been settled and Parker Keough now represents Hope Harvest. *Id.*
32. Attached to the e-mail referenced above in ¶ 31 is a Letter of Appointment and Informed Consent/Conflict Waiver signed by Shannon Senior on December 13, 2021 which appoints Parker Keough as Hope Harvest, LLC's attorneys. *Id.*
33. The Respondent's license renewal deadline was December 29, 2021 ("Renewal Deadline").
34. The Respondent did not submit its Renewal Application by the Renewal Deadline, and the Department did not approve any extensions to the Renewal Deadline.

V. DISCUSSION

A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. **Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are

more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statute and Regulation

As stated above, R.I. Gen. Laws § 21-28.6-1 *et seq.* provides for the licensing of cultivators. More specifically, R.I. Gen. Laws § 21-28.6-16 and § 1.3 of the *Rules and Regulations Related to the Medical Marijuana Program Administered by the Office of Cannabis Regulation at the Department of Business Regulation*, 230-RICR-80-05-1 (“Regulation”) set forth the requirements to apply and hold a cultivator license. Pursuant to R.I. Gen. Laws § 21-28.6-16, cultivators are only allowed to grow at a single location and the license expires one (1) year after being issued. R.I. Gen. Laws § 21-28.6-16 provides in part as follows:

Licensed medical marijuana cultivators. (a) A licensed medical marijuana cultivator licensed under this section may acquire, possess, manufacture, cultivate, deliver, or transfer medical marijuana to licensed compassion centers, to another licensed medical marijuana cultivator. A licensed medical marijuana cultivator shall not be a primary caregiver cardholder registered with any qualifying patient(s) and shall not hold a cooperative cultivation license. Except as specifically provided to the contrary, all provisions of this chapter (the Edward O. Hawkins and Thomas C. Slater medical marijuana act), apply to a licensed medical marijuana cultivator unless they conflict with a provision contained in this section.

(i) Medical marijuana cultivators shall only be licensed to grow marijuana at a single location registered with the department of business regulation and the department of public safety. The department of business regulation may promulgate regulations governing where cultivators are allowed to grow. Medical marijuana cultivators must abide by all local ordinances, including zoning ordinances.

(c) A licensed medical marijuana cultivator license issued by the department of business regulation shall expire one year after it was issued and the licensed medical marijuana cultivator may apply for renewal with the department in accordance with its regulations pertaining to licensed medical marijuana cultivators.

R.I. Gen. Laws § 21-28.6-9 provides in part as follows:

Enforcement. ***

(e) (1) Notwithstanding any other provision of this chapter, if the director of the department of business regulation, or his or her designee, has cause to believe that a violation of any provision of this chapter or the regulations promulgated thereunder has occurred by a licensee or registrant under the department's jurisdiction, or that any person or entity is conducting any activities requiring licensure or registration by the department of business regulation under this chapter or the regulations promulgated thereunder without such licensure or registration, or is otherwise violating any provisions of this chapter, the director, or his or her designee, may, in accordance with the requirements of the administrative procedures act, chapter 35 of title 42:

(i) With the exception of patient and authorized purchaser registrations, revoke or suspend any license or registration issued under chapter 26 of title 2 or this chapter.

Section 1.1.1 of the Regulation provides in part as follows:

Definitions A. The following definitions are for terms used in this Part, including but not limited to many of the relevant definitions from R.I. Gen. Laws §§ 21-28.6-3 and 21-28-1.02.

23. "Interest holders" or "Key persons" means with respect to an applicant or licensed entity, the following persons or entities:

- a. All persons and/or entities with any ownership interest with respect to the applicant/licensee, including parent companies if the applicant licensee is a subsidiary of another entity, and
- b. All officers, directors, members, managers or agents of the applicant/licensee, and any other entities described in § 1.1(A)(23)(a) of this Part, and
- c. All persons or entities with managing or operational control with respect to the applicant/licensee, its operation, any other entities described in §§ 1.1(A)(23)(a) and (b) of this Part, the license and/or licensed facilities whether they have an ownership interest or not, and
- d. All investors or other persons or entities with any financial interest with respect to the applicant/licensee, any other entities described in §§ 1.1(A)(23)(a), (b) and (c) of this Part, its operations, the license, and/or licensed facilities, whether they have ownership interest or not, and
- e. All persons or entities that hold interest(s) arising under shared management companies, management agreements, or other agreements that afford third-party management or operational control with respect to the applicant/licensee, its operations, the license and/or the licensed facilities, and

f. To the extent that any Interest Holder is an entity (corporation, partnership, LLC, etc.), all Interest Holders in that entity and all Interest Holders therein down to the individual person level.

30. "Material financial interest or control" means:

- a. Any ownership interest, regardless of the size of the holding, and including any ownership interest through a subsidiary or affiliate;
- b. Trusteeship, mortgage, guarantor, endorser or surety relationship, or loan relationship, except that loan relationship for the purposes of this definition shall exclude accounts payable and accounts receivable on account of a medical marijuana purchase order;
- c. Any other beneficial financial interest as determined by DBR such that the holder bears the risk of loss (other than as an insurer) or has an opportunity to gain profit from the operation or sale of the regulated medical marijuana business; and/or
- d. Managerial or operational control, including but not limited to interlocking directors or officers or through a management agreement.

Section 1.3(C) of the Regulation provides in part as follows:

C. Post-Approval Process and Timeline

2. Once the license has been issued, the licensed cultivator must take reasonable and documented efforts to launch licensed cultivator activities, which for purposes of this paragraph shall mean actual medical marijuana cultivation, processing, packaging, manufacturing, and/or other medical marijuana activities requiring a cultivator license pursuant to the Act. If such efforts take longer than six (6) months, the licensed cultivator must show good cause to DBR why the license should not be revoked for non-use.

Section 1.3(E) of the Regulation provides in part as follows:

1.3 E. Application for Cultivator License

1. DBR will evaluate applicants based upon the information provided by applicants on the application forms/submissions and otherwise obtained during the application process.

4. Pursuant to R.I. Gen. Laws § 21-28.6-16(i), cultivators shall only be licensed at a single location registered with DBR and RISP. ***

5. The application shall contain the following minimum information:

- a. The applicant's legal and any d/b/a name(s), certificate of incorporation or organization in Rhode Island or certificate of authority to transact business in Rhode Island, articles of incorporation or organization, bylaws or operating agreement and corporation organization chart.

- i. The legal names and current addresses of all creditors providing loans or financial and/or holding a security interest in the premises and/or other assets to be used in the cultivator operations, if any.

Section 1.3(F) of the Regulation provides in part as follows:

F. Prerequisites to Issuance of Cultivator License and Commencement of Operations

1. If an applicant seeking to operate as a licensed cultivator is notified that its application has been approved by DBR, it shall complete the below steps before a cultivator license will be issued.

3. Final Information and Documentation to be Supplied. The applicant must provide any updates to previously submitted application information and the following additional items to DBR:

a. A sufficient description of the final physical location of the cultivator premises (by plat and lot number, mailing address, etc.).

b. Evidence of complete compliance of the facility with the local zoning laws in the form of certificate or letter from an authorized zoning official of the municipality and certification by an authorized officer of the applicant as to compliance with any other applicable local ordinances.

c. Unless already provided at time of initial application, evidence that the physical location for the cultivator premises is not located within one thousand feet (1,000') of the property line of a preexisting public or private school.

d. A current Certificate of Occupancy (or equivalent document) to demonstrate compliance of the cultivator facility with the relevant provisions of R.I. Gen. Laws Chapters 23-28.1 and 23-27.3 [Fire Safety Code and State Building Code, respectively].

e. Evidence of either ownership of property or agreement by owner of property to allow the operation of a licensed cultivator on the property.

f. A final diagram of the facility, including where marijuana will be cultivated, stored, processed, packaged, and manufactured, and where security alarms and cameras and surveillance recording storage will be located.

Section 1.3(H) of the Regulation provides in part as follows:

H. Variance Requests - Changes in Licensed Premises, Activities, Ownership and Control

1. A cultivator license shall not be assigned or otherwise transferred to other persons or locations, unless pre-approved in accordance with the below paragraphs.

2. A licensed cultivator has a continuing obligation to update, amend and/or correct any information requested and/or submitted in the application process to DBR.

3. The licensed cultivator must seek pre-approval from DBR by means of requesting a variance for all material changes to the approved cultivator application

or any materials or plans approved thereafter by DBR. DBR may deny the variance if it determines that such variance will cause harm to public health and safety or cause the applicant to be in violation of the Act or any regulations promulgated thereunder, or otherwise would have caused the licensee to not have qualified for licensure originally.

4. A licensed cultivator shall submit to DBR a written request for a variance for any proposed change described below at least sixty (60) calendar days prior to the proposed effective date of the change:

- a. A proposed change in ownership of the licensed cultivator;
- b. Proposed change in the membership of a board of directors, board of trustees, or managers/members;
- c. Proposed change in corporate officer;
- d. Proposed merger, dissolution, entity conversion or amendment of corporate organization;
- e. Proposed entering into a management agreement, changing management companies, and/or material changes to an existing management agreement;
- f. Proposed changes in the approved licensed cultivator premises;
- g. Proposed change to approved premises floor plan

- h. Proposed expansion/modification of the premises, including expanding or modifying the scope or scale of approved and/or licensed activity:

- i. Or any other changes requiring a variance as determined by DBR.

5. All variances must be pre-approved by DBR. Unless the licensed cultivator provides timely notification of the above changes and receives a variance issued by DBR or a waiver of the requirement of prior notice and issued variance, the license shall be void and returned to DBR.

6. As to any proposed change of ownership or to a management agreement that will effect a change of majority control and/or decision-making authority with respect to the operation of the licensed cultivator or as to any proposed change in an approved licensed cultivator premises location, DBR may require the licensed cultivator to follow the process for a new application, which may include a new application fee.

7. Change in contact information:

a. The licensed cultivator shall notify DBR in writing within ten (10) days of any changes in the licensee's mailing addresses, email addresses, phone numbers, or any other changes in contact information reported on the most recent initial/renewal application. Note that a change in business address/location is subject to the pre-approval variance requirements in § 1.3(H) of this Part.

Section 1.3(I)(i) of the Regulation provides as follows:

Discontinuance of Business Operations

1. The license shall be void and returned to DBR if the cultivator discontinues its operation, unless the discontinuance is on a temporary basis and approved by DBR.

D. Arguments

The Department argued that the License has expired since the Respondent failed to submit a renewal application by the date of the License's expiration of December 29, 2021 and did not request and did not receive any approvals of a variance. Separate from the renewal, the Department also argued the License should be revoked for failing to comply with the regulatory requirement to commence operations within six (6) months of the issuance of the License unless good cause is shown. In addition, the Department argued the Respondent no longer has a premise which is required as a condition of licensing and never requested permission to discontinue business operations. In addition, the Department argued that the License should be revoked as the Respondent failed to disclose substantial debt and interest holders and failed to obtain preapproval for material changes to the Respondent's corporate ownership and control.

The Respondent argued that Shannon Senior is ready to submit a renewal application if allowed, and she had believed Mr. McGoff and Mr. Byl were submitting such an application. The Respondent argued that Ms. Senior trusted the wrong business partners and legal counsel and is now ready to move forward with new and trustworthy partners who have stepped in with the renewal fee and an identified location. The Respondent argued that it is not making an equity argument but rather is arguing for due process to allow for the submission and review of a variance request.

E. Whether Respondent's License Should be Revoked and/or License Application be Denied

a. License Has Expired

The parties agreed that the License was issued on December 29, 2020. Pursuant to R.I. Gen. Laws § 21-28.6-16(c), a cultivator license expires one (1) year after it was issued. Thus,

the License expired on December 29, 2021.² The parties agreed that that the Respondent did not file a renewal application. The parties agreed that the Department did not approve any extension of the renewal deadline. The Respondent argued that Ms. Senior believed that other individuals would be filing the renewal application. Nonetheless, no renewal application was filed. Pursuant to R.I. Gen. Laws § 21-28.6-16(c), the License expired.

b. Lack of Premises

Under the statute and Regulation, cultivators may only grow at one location. Section 1.3(H)(4)(f) of the Regulation³ requires that a licensed cultivator must submit to the Department a written request for changes to approved licensed cultivator premises. Section 1.3(H)(3) provides that the Department may deny a variance request if it determines that such a variance will cause harm to public health or safety or cause the application to be in violation of the statute or Regulation. The statute and Regulation require a premise for a licensed location. R.I. Gen. Laws § 21-28.6-16(i) and § 1.3(H)(4).

When the License was issued, the Respondent was located at a location in Newport (“Newport Premise”). Joint Exhibit Two (2) (copy of License). The parties agreed that the owners of the Newport Premise commenced eviction proceedings against the Respondent on July 6, 2021 and received a Court judgment in its favor on August 23, 2021.

The Respondent argued that Ms. Senior has identified new business partners that would have a suitable location. However, the Respondent cannot fulfil a condition of licensing as it does not currently have a premise. Section 1.3(F) details the requirements that a physical premise must have that are a pre-requisite for the issuance of a license. E.g. description of location, evidence of zoning compliance, certificate of occupancy. A requirement of being

² The expiration date is listed on the License issued to the Respondent. Joint Exhibit Two (2) (copy of the License).

³ The references to sections within this decision will refer to various sections of the Regulation.

licensed as a cultivator is having physical location which complies with the zoning of the town/city where it is located. Indeed, a cultivator could not fulfill its licensed functions without a physical location. *Infra*.

Without a location, the Respondent is not in compliance with the requirements for licensing. Section 1.3(F). Under § 1.3(H)(3), a variance cannot issue if it would have caused the license to not have been qualified for licensure thereunder. The Respondent would not have qualified for licensure without a location. Further, § 1.3(H)(5) provides that without a variance, a cultivator license becomes null and void. The Respondent never requested a variance. It is undisputed that it no longer has a premise. The Respondent cannot be licensed as it does not have a premise. And without a variance, the License is null and void. See *In the Matter of: Heneault & Co. LLC*, DBR No.21OCR015 (5/17/22)

c. Failed to Timely Commence Operations

Section 1.3(C) provides that once a cultivator license has issued, the licensee has six (6) months to commence licensed cultivator activities except for good cause shown. Thus, the Respondent had until June 29, 2021 (six (6) months from December 29, 2020) to commence licensed activities. It was undisputed that no such activities were commenced either within or after six (6) months. The Respondent did not provide any good cause to the Department for an extension. The Respondent was evicted from the Newport Premise by August 23, 2021. Pursuant to the § 1.3(C), the Respondent failed to timely commence operations.

d. Ceased Operations

Section 1.3(I)(i) provides a cultivator license shall be void if the cultivator discontinues its operation, unless the discontinuance is on a temporary basis and approved the Department. The Respondent never commenced its operation and lost its premises. It never received

approval from the Department to discontinue operations. This provision is consistent with § 1.3(H)(5) that provides that a license shall be void if the licensee fails to obtain a necessary variance. Thus, the License is void as it discontinued operations without approval.

e. Failed to Disclose Substantial Debt and Interest Holders

On April 12, 2021, the Respondent informed the Department that she received an interest free loan from a Mr. McGoff to Ms. Senior in October, 2020. Ms. Senior was listed as the sole owner of the Respondent in the Respondent's 2017 application. ASOF; Exhibit One (1) (application). Ms. Senior did not disclose this loan to the Department until April 12, 2021. On April 12, 2021, Ms. Senior indicated that it was her understanding that the loan from Mr. McGoff did not have to be disclosed as Mr. McGoff did not receive any financial benefit from the loan. This is contrary to the regulatory requirements.

Section 1.1.1(A)(23)(d) defines interest holders to include “[a]ll investors or other persons or entities with any financial interest with respect to the applicant/licensee, any other entities described in §§ 1.1(A)(23)(a), (b) and (c) . . . its operations, the license, and/or licensed facilities, whether they have ownership interest or not.” While Mr. McGoff may not initially have had an ownership interest in the Respondent, he had a financial interest in the Respondent once he gave the Respondent (Ms. Senior) a loan. Indeed, § 1.1.1(A)(30)(c) defines material financial interest or control to include “[a]ny other beneficial financial interest as determined by DBR such that the holder bears the risk of loss (other than as an insurer).” Any lender bears a risk of loss (nonrepayment of the loan) even if the lender may not have initially charged interest on the loan. Finally, § 1.3(E)(5)(i) provides the minimum information to be included in the application includes the legal names and addresses of all creditors providing loans. The

Regulation makes no distinction about whether the loans are interest free or not. Anyone providing loans or having a financial interest must be disclosed.

The parties agreed that the Respondent received loans from and incurred debt to Mr. McGoff for business related expenses starting in October, 2020 and did not disclose this to the Department until April, 2021. Mr. McGoff was never listed on the Form 2 interest holder disclosure filing that is part of the application. Mr. McGoff also brought in a Mr. Byl and a Mr. Brito who apparently were involved in purchasing equipment via Mr. McGoff and/or oversight and operations management of the Respondent. Neither Mr. Byl nor Mr. Brito's interest in the Respondent were disclosed to the Department. The Respondent failed to disclose material financial interests to the Department.

Section 1.3(H)(2) requires that a licensed cultivator has a continuing obligation to update, amend and/or correct any information requested and/or submitted in the application process to the Department. The Respondent failed to update and disclose its new substantial debt, interest holders, and material financial interests.

f. **Failed to Obtain Approval for Material Changes to Ownership and Control**

Section 1.3(H)(1) provides that a "cultivator license shall not be assigned or otherwise transferred to other persons or locations, unless pre-approved in accordance with the below paragraphs." Section 1.3(H)(3) requires that a licensed cultivator must seek pre-approval from DBR by means of requesting a variance for all material changes to the approved cultivator application or any materials or plans approved thereafter by DBR. Section 1.3(H)(4) requires variance requests for a proposed change in ownership of the licensed cultivator or a proposed change in corporate officer, proposed merger, dissolution, entity conversion or amendment of corporate organization.

The Respondent informed the Department on April 12, 2021, that on March 19, 2020, Ms. Senior agreed to give interest to Mr. McGoff and Mr. Byl and signed a membership interest purchase agreement giving Mr. McGoff a 60% interest and Mr. Byl a 20% interest in the company and agreed to pay interest on the October, 2020 loan. The parties agreed that any membership interest purchase loan identified in that April 12, 2021 disclosure would have needed the Department's preapproval under 1.3(H). ASOF. The Respondent did not notify the Department or request a variance in terms of a change in ownership and/or control. The Respondent did not notify the Department of the litigation between Ms. Senior and Mr. McGoff and its resolution. Section 1.3(H)(5) requires all variances must be pre-approved by the Department and without a variance, the license shall be void. Thus, the License is void.

g. Equity/Due Process

The Department argued that the Respondent's arguments were based on equity which is inapplicable to administrative proceedings. The Respondent argued that due process supports its request to submit a variance and be given a fair chance to submit that request with its new partners. As detailed above, the Respondent was a licensed cultivator and then failed to comply with numerous statutory and regulatory requirements to maintain and renew said license. The Respondent argued that it received poor legal advice and risked being embroiled in litigation in order to comply with Department regulations. When the Department sought to deny the Respondent's license renewal and revoke the license, the Respondent was given notice of the Department's proposed action and afforded a meaningful opportunity for a hearing as required by due process and R.I. Gen. Laws § 42-35-1 *et seq.*, the Administrative Procedures Act. *Matthews v. Eldridge*, 424 US 319 (1976); and *Kaveny v. Town of Cumberland Zoning Board of Review*, 875 A.2d 1 (RI 2005) (due process requirements).

It is not a question of due process to be allowed to submit a variance request. There are regulatory requirements in terms of timeliness and substance in relation to the submission of variance requests. Variance requests are to be filed so that if approved, they are approved prior to any change. The Respondent never timely filed any variance requests. Rather, the Respondent now argues that it now has the right business partners who are not like the prior ones so the Respondent should now be licensed. That is an argument based on perceptions of fairness or equity. Equitable principles are not applicable to an administrative procedure. *Nickerson v. Reitsma*, 853 A.2d 1202 (R.I. 2004). In *Nickerson*, the Supreme Court vacated a Superior Court order that had vacated an agency sanction on so-called “inherent equitable powers.” *Id.* at 1206. In other words, the Superior Court could not use its equitable powers for an administrative matter since equitable principals are not applicable to administrative procedures.

F. Conclusion

Pursuant to R.I. Gen. Laws § 21-28.6-9(e), a cultivator license may be revoked for violations of the statute and Regulation. The Respondent violated the Regulation by failing to disclose a loan, interest holders, material financial interests, and a change in the Respondent’s ownership. The Respondent failed to disclose substantially material information regarding its finances and ownership and control.⁴ The Respondent argued that while she failed to file a renewal application, she relied on the wrong people and if the License could be renewed, she now has the right people and a location. However, the issue is not one of speculation that perhaps the Respondent could do better in future. Instead, the issue is this License. In this

⁴ Indeed, the litigation and conflicting information from different people submitted to the Department as detailed in the ASOF demonstrate why such information is required to be disclosed to the Department about creditors and interest holders and ownership and control.

matter, the Respondent failed to disclose numerous substantial and required material financial information. Furthermore, based on the foregoing, the License has expired so there is no License to renew. Finally, based on the foregoing, the License is considered void.⁵

VI. FINDINGS OF FACT

1. On February 7, 2022, the Order to Show Cause was issued to the Respondent by the Department.
2. The parties agreed to have the matter decided on agreed facts and exhibits, and briefs. Briefs were timely filed by June 27, 2022.
3. The facts contained in Section IV and V are incorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 21-28.6-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, the Regulation, and 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings*.
2. Pursuant to R.I. Gen. Laws § 21-28.6-1 *et seq.* and the Regulation, a licensed cultivator requires a physical location, is required to commence operations within six (6)

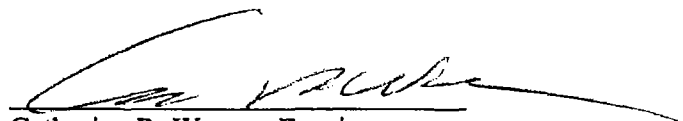
⁵ As noted in *Heneault*, R.I. Gen. Laws § 21-28.6-16(o) provides that “[e]ffective July 1, 2019, the department of business regulation will not reopen the application period for new medical marijuana cultivator licenses.” With statutory limits on this type of licenses, it brings to mind the statutory mandates of liquor licensing which similarly limits the number of certain types of liquor licenses as well as provides for certain liquor licenses to be abandoned or revoked when they are no longer being used. For liquor licensing, there is a public policy behind the statute of not allowing the transfer and prolonged non-use of liquor licenses. *Green Point v. McConaghy*, 2004 WL 2075572 (R.I. Super.); *Marty’s Liquors v. Warwick Board of Commissioners*, 1985 WL 663587. As noted in *Marty’s Liquor*, the general assembly enacted legislation [R.I. Gen. Laws § 3-5-16] specifically providing to reduce the number of Class A liquor licenses so that Class A licenses cannot be kept “alive” for improper purposes. The Department has consistently ensured that new life is not breathed into liquor licenses that have been revoked, expired, abandoned, or are null and void. See *Baker v. Department of Business Regulation*, 2007 WL 1156116 (R.I. Super.) (cannot transfer a Class B liquor license that was not issued to a *bona fide* tavern keeper or victualer). Similarly, the Respondent violated numerous financial disclosure requirements and no longer meets the condition of licensing to have a premise as well as failed to commence operations and file a renewal application. The Respondent is now trying to stay in business and is asking the Department to renew the License despite its noncompliance with many conditions of licensing.

months, and is to disclose required financial information such as creditors, financial interests, and change in control and ownership. The Respondent failed to comply with these statutory and regulatory requirements.

VIII. RECOMMENDATION

Pursuant to R.I. Gen. Laws § 21-28.6-1 *et seq.* and the Regulation, the Respondent's License has expired and is null and void and is revoked.

Dated: July 18, 2022

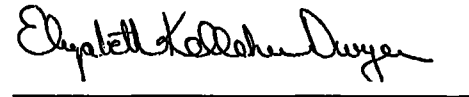

Catherine R. Warren, Esquire
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT
 REJECT
 MODIFY

Dated: 7/26/2022


Elizabeth Kelleher Dwyer, Esquire
Interim Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER 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 THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 26th day of July, 2022, that a copy of the within decision and Notice of Appellate Rights was sent by first class mail, postage prepaid and by electronic delivery to Marc C. Hamer, Esquire, One Custom House Street, Suite 2A, Providence, R.I. 02903 and by electronic delivery to Pamela Toro, Esquire, and Sara Tindall-Woodman, Esquire, Department of Business Regulation, 560 Jefferson Blvd., Suite 204, Warwick, R.I. 02886