

Firm Says Rights Violated In Pot License Fight

By DARA KAM – NEWS SERVICE OF FLORIDA · JUN 25, 2019

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Marijuana plants

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A Tampa-based orchid grower has filed a federal civil rights lawsuit against the Florida Department of Health and several current and former state officials, alleging constitutional due-process violations related to the nursery's attempt to get a medical marijuana license.

The lawsuit, filed last week in Tallahassee by prominent Jacksonville civil-rights lawyers William Sheppard and Elizabeth White, is the latest effort by Louis Del Favero Orchids Inc. to enter the highly restricted medical marijuana market in Florida, where operators have sold licenses for upwards of \$50 million.

But the federal complaint adds a new twist, by seeking unspecified monetary damages not only from the state but from the individuals named in the lawsuit: Surgeon General Scott Rivkees and his predecessor, Celeste Philip; Office of Medical Marijuana Use Director Courtney Coppola and her predecessor, Christian Bax; and 11 others, identified as “John Doe #1-11,” who allegedly played a role in the health department’s decisions not to grant the orchid grower a license.

Del Favero has waged a years-long legal battle in pursuit of a license, with a pile of cases pending in Tallahassee circuit court and a state appellate court as the nursery’s owners have grown increasingly frustrated over health officials not allowing new applicants to gain access to what some analysts predict could be one of the country’s most-lucrative medical marijuana markets.

“Totally exasperated,” David Vukelja, one of Del Favero’s owners, told The News Service of Florida in a telephone interview.

“I can be as patient as the next guy. If someone were to say they’re going to open the application process come September or November, then we’d have that to rely on. But that hasn’t happened to date,” Vukelja, who is also Del Favero’s general counsel, said. “I guess we can only take so much. We’re not going to stand around like sheep waiting for you to tell us when you’re going to open the door for us.”

Florida officials first began issuing licenses to medical marijuana operators in 2015, after state legislators authorized non-euphoric cannabis for patients with severe epilepsy or cancer.

The state issued more licenses following voter approval in 2016 of a constitutional amendment that broadly legalized medical marijuana. Under the amendment, state officials were to begin registering an unspecified number of “medical marijuana treatment centers” by Oct. 3, 2017.

A 2017 state law, aimed at implementing the amendment, required health officials to issue 10 new licenses to applicants that met certain requirements. The law also authorized additional licenses, as the number of Florida patients increased.

Overall, the state has issued licenses to 22 operators, including eight new operators who were granted licenses this year. All of the currently licensed firms originally applied under the 2015 law.

But --- more than 18 months after the deadline in the constitutional amendment --- health officials have not started accepting applications from potential operators that may not have participated in the earlier process.

Under the 2017 law, health officials have to give special preference for up to two licenses to applicants that “own one or more facilities that are, or were, used for the canning, concentrating, or otherwise processing of citrus fruit or citrus molasses and will use or convert the facility or

facilities for the processing of marijuana.” Following passage of the law, Del Favero spent \$770,000 to purchase property in Pinellas County that met the requirements for the citrus preference.

Del Favero tried to register as a medical marijuana operator following an October 2018 court ruling, in an unrelated case, that found the 2017 law was “inconsistent” with the constitutional amendment. The state is appealing that ruling.

But health officials ignored Del Favero’s attempts to get a license, while continuing to whittle the number of available licenses and thereby giving the new operators a competitive advantage, the orchid grower’s lawyers argue in court documents.

The health department’s failure to review the grower’s application while granting other licenses allowed “others to ‘leapfrog’ over Del Favero’s rights,” Del Favero’s lawyers wrote in Thursday’s 38-page federal court filing.

“These actions fail to comport with the basic requirements of due process,” the lawyers added.

Del Favero’s attorneys are also relying in part on a Florida law that requires state agencies to issue licenses within 90 days after receipt of completed applications. Under the law, any application not approved or denied within the three-month period is considered approved.

But state health officials contend that, because they have not opened the application process, Del Favero is not eligible for a license.

“No such dates or deadlines have been published by the department yet,” Department of Health General Counsel Louise St. Laurent, who is also named in the lawsuit, wrote to Del Favero’s lawyers in January. “Thus, there has not been, nor is there any, open application period. Accordingly, Del Favero’s purported application was premature, untimely, and did not trigger any obligation for the department to take action.”

Del Favero has blasted the health department for granting eight licenses to applicants who lost out in the first round of licensing in 2015 and is challenging the licenses at the 1st District Court of Appeal.

The eight applicants who were granted licenses this spring “were the least qualified” of those vying for licenses in 2015, said Vukelja.

“Now all of a sudden, mysteriously, all of them get licenses,” he said. “With that, we pretty much reached the end of our rope. I’m tired of being told that no one in the state of Florida is responsible for their (health officials’) abject refusal to do what the constitutional amendment and the Florida statutes required them to do. I’m going to hold them to task, if no one else will.”

Del Favero has followed the Constitution and the statute, Vukelja said.

“In the meantime, we’re told go stand in a corner and wait. We’ll open the application process some day,” he said, adding that he’s “not wild about litigation.”

John Lockwood, a lawyer who represents medical marijuana operators and license seekers, suggested Del Favero needs to be patient.

In the new state budget signed by Gov. Ron DeSantis, health officials received funding and authority to proceed with rulemaking that will allow the application process to move forward, Lockwood said.

Lockwood accused Del Favero of trying to get a license “by fiat,” instead of waiting and “participating in the competitive process like everyone else.”

“That is not how these things work,” he said.