

STATE OF NEW YORK  
SUPREME COURT

ALBANY COUNTY

**In the Matter of the Application of**

**CARMINE FIORE, WILLIAM NORGARD,  
STEVEN MEJIZ, and DOMINIC SPACCIO,**

Plaintiffs,

**DECISION & ORDER**

-against-

Index No.: 907282-23

**NEW YORK STATE CANNABIS CONTROL BOARD, et. al,**

Defendants.

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Supreme Court, Albany County  
Present: Hon. Kevin R. Bryant, J.S.C.

Appearances:

**Plaintiff(s)**

Patrick Joseph Smith / Brian Burns  
*Attorneys for Carmine Fiore, William Norgard, Steve Mejia and Dominic Spaccio*  
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**Defendant(s)**

Shannan C Krasnokutski  
*Attorney for the New York Cannabis Management, Tremaine Wright, Chris Alexander*  
Office of the New York State Attorney General  
The Capitol  
Albany, New York 12224

**Non-Parties**

Jorge L Vasquez  
*Attorney for CONBUD LLC, CONBUD LLC, 82-J, LLC, Kush Culture Industry, LLC,  
Summit Canna, LLC, Summit Canna, LLC*  
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737 E 6th St.  
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**Bryant, K.**

On or about August 18, 2023, a Decision and Order having been entered by this Court directing that the Office of Cannabis Management (hereinafter referred to as “Defendants”) submit a list to this Court of “any licensees who, prior to August 7, 2023, met all requirements for licensing, including but not limited to site plan approval from the CCB and, where applicable, from local municipalities” and that Defendants submit to this Court, on notice, by the close of business on August 22, 2023, a list of all licensees who have met all requirements for licensing”; and

OCM having submitted a list of thirty licensees to this Court on August 23, 2023<sup>1</sup>; and

Objections having been filed to said list by counsel for Plaintiffs<sup>2</sup>; and

This Court having indicated on the record that exemptions would be granted to twenty-three of the identified licensees and having directed that an Order be submitted to the Court by counsel for Respondents on notice; and

Prior to the entry of said Order, an affidavit from Patrick Mckeage, the First Deputy Director of OCM having been submitted in response to the objections; and

Further objections having been submitted by counsel for Plaintiffs after receipt of said affidavit correctly arguing, *inter-alia*, that “Mr. Mckeage’s latest affidavit appears to admit that not all thirty applicants have met all licensing requirements” and requesting that “additional procedures . . . should be followed before the Court enters any order exempting any provisional licensee from the preliminary injunction”<sup>3</sup> and

The Court having reviewed said Affidavit and Plaintiffs’ objections and having given counsel for Defendants the opportunity to respond further; and

The Court having received a further affidavit from Mr. Mckeage that provides certain additional information but still does not provide the clarity that is necessary for this Court to determine whether-or-not a particular licensee should be exempt.

NOW, it is hereby the finding of this Court that pending further submissions as outlined below, the preliminary injunction will remain in effect regarding all CAURD licensees and no exemptions will be granted pending further submissions and clarification of compliance with the terms and conditions of this Court’s prior Order.

This Court’s prior Decision and Order specifically provides that the list submitted by Defendants shall identify those licensees who have met “all requirements for licensing”. While the Court accepted the list provided by Defendants as being in compliance with this Court’s

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<sup>1</sup> NYSCEF doc. 166

<sup>2</sup> NYSCEF doc. 255

<sup>3</sup> NYSCEF doc. 293

directive, the affidavit of Mr. Mckeage contains contradictory and confusing assertions that leave significant questions as to whether the licensees on the list have actually met all requirements.

Most notably, the affidavit indicates that

each of these thirty (30) provisional licensees submitted post-selection applications to this Office for its and review and processing, but the Office has been unable to process these thirty (30) provisional licensees . . . however **it is apparent that many** of these licensees are ready to open their dispensaries now. **Most** have completed all licensing tasks and **some** are only finalizing the construction and buildout of their retail dispensary license to meet the requirements of the adult-use cannabis program<sup>4</sup> (emphasis supplied).

It is clear to this Court upon review of the affidavits that OCM failed to comply with this Court's Order regarding exemptions to the injunction. They have submitted a list which, by their own admission, includes licensees who are still finalizing construction and whose post-selection inspections have not been scheduled or completed. It is also clear that an unclear number of the sites have not been inspected "to ensure [the site] meets all the public health and safety requirements in the Cannabis Law and associated regulations".

It is not clear to this Court whether any of the thirty identified licensees have completed all post-selection requirements and inspections and it should be clear that those who have not, should not have been included on the list submitted to the Court as set forth in the prior Order.

Under the circumstances, given the conflicting information contained in the affidavits, absent further detailed information from OCM, this Court will not lift the injunction regarding any of the identified licensees and herein directs OCM to submit "supporting underlying documentation" to accompany any further submission regarding exemptions to the injunction.

As requested by Plaintiffs, this Court specifically directs that OCM resubmit its list and that they "certify, under oath and on an applicant-by-applicant and requirement-by-requirement basis . . . that each of the [included] applicants have satisfied each licensing requirement". Upon receipt of further submissions, this Court will promptly issue an Order that addresses each individual licensee on a case-by-case basis.

This shall constitute the Decision and Order of the Court.

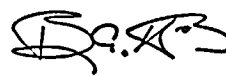
The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: August 28, 2023  
Kingston, New York

ENTER,

  
HON. KEVIN R. BRYANT, J.S.C.

<sup>4</sup> NYSCEF doc. 278



08/30/2023