

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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SAN FELASCO NURSERIES, INC.,
d/b/a GRANDIFLORA, a Florida
corporation,

Petitioner,

vs.

DOH Case No. 2015-0670
DOAH Case No. 15-7268

STATE OF FLORIDA, DEPARTMENT
OF HEALTH, OFFICE OF COMPASSIONATE
USE and CHESTNUT HILL TREE FARM, LLC,
a Florida limited liability company,

Respondents.

_____ /

FINAL ORDER

THIS MATTER is before the Department of Health for consideration of an Amended Recommended Order and entry of a Final order. On May 10, 2016, Administrative Law Judge Bruce McKibben issued an Amended Recommended Order dismissing the Petition for Formal Hearing filed by Petitioner San Felasco Nurseries, Inc., d/b/a Grandiflora and relinquishing jurisdiction to the Department of Health. The Amended Recommended Order is adopted and incorporated by reference as Exhibit A.


No exceptions were timely filed by any party pursuant to section 120.57(1)(k), Florida Statutes.

Based on the foregoing, it is ORDERED:

The Petition for Formal Administrative Proceedings filed by San Felasco Nurseries, Inc., d/b/a Grandiflora, is dismissed. This proceeding is closed.

DONE AND ORDERED this 24 day of June, 2016, in Tallahassee, Leon
County, Florida.

Celeste M. Philip, MD, MPH
State Surgeon General
Florida Department of Health

By: 
Alexis Lambert
Chief of Staff

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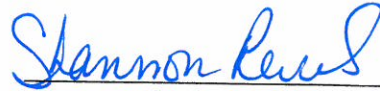
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R. Bruce McKibben
Administrative Law Judge
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The DeSoto Building
1230 Apalachee Parkway
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been sent by electronic mail and regular U.S. mail and/or by inter-office mail to each of the above-named persons this 27th day of June 2016.



Agency Clerk
Department of Health
4052 Bald Cypress Way, BIN A-02
Tallahassee, Florida 32399-1703

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAN FELASCO NURSERIES, INC.,
d/b/a GRANDIFLORA, A FLORIDA
CORPORATION,

Petitioner,

vs.

Case No. 15-7268

DEPARTMENT OF HEALTH, OFFICE OF
COMPASSIONATE USE; AND CHESTNUT
HILL TREE FARM, LLC, A FLORIDA
LIMITED LIABILITY COMPANY,

Respondents.

LOOP'S NURSERY AND GREENHOUSES,
INC.,

Petitioner,

vs.

Case No. 15-7274

DEPARTMENT OF HEALTH, OFFICE OF
COMPASSIONATE USE; CHESTNUT HILL
TREE FARM, LLC.; AND SAN FELASCO
NURSERIES, INC.,

Respondents.

CHESTNUT HILL TREE FARM, LLC,

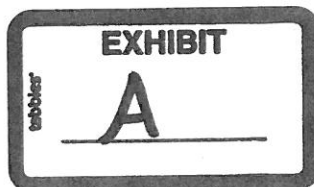
Petitioner,

vs.

Case No. 15-7276

DEPARTMENT OF HEALTH, OFFICE OF
COMPASSIONATE USE; AND SAN
FELASCO NURSERIES, INC.,

Respondents.



AMENDED ORDER GRANTING DISMISSAL OF PARTIES,
RELINQUISHING JURISDICTION,
AND AMENDMENT OF REMAINING PETITION

This cause came to be heard on the Motion to Dismiss and/or Motion for Summary Recommended Order filed by Petitioner, Chestnut Hill Tree Farm, LLC ("Chestnut"), in DOAH Case No. 15-7276. An understanding of the history of this case is critical to the consideration of Chestnut's Motion, and its impact on the other parties, San Felasco Nurseries, Inc., d/b/a Grandiflora ("San Felasco"), and Loop's Nursery & Greenhouses, Inc. ("Loop's").

BACKGROUND

In 2014, the Florida Legislature passed the Medical Cannabis Act which authorized the dispensing of low-THC marijuana in certain specified medical situations. After months of efforts, the Department of Health, Office of Compassionate Use (the "Department"), passed rules regulating the growth of low-THC marijuana and the entities which would be allowed to grow and dispense the substance. The State was divided into five regions: Northeast, Northwest, Central, Southeast, and Southwest. The instant case involves the Northeast region. The rules developed by the Department set out criteria to be met by any grower wishing to become approved as a dispensing organization ("DO") in one of the regions.

Applications were submitted to the Department and, in November 2015, the Department issued its decision as to which of the applicants in the Northeast region should be approved. Based upon its review of the criteria, the Department assigned the following aggregate scores to those applicants: San Felasco--3.9750 points; Chestnut--3.7917 points; and Loop's--3.5708 points. However, due to the Department's determination that San Felasco's application did not "meet the requirements of s. 381.986 [Florida Statutes]," the Department initially approved the application of Chestnut.

The denied applicants, San Felasco and Loop's, filed petitions for formal administrative hearings to challenge the Department's decision to deny their applications in favor of Chestnut. Chestnut filed a Petition for Formal Administrative Hearing to insure that its approval would become final despite receiving the second highest aggregate point score. Those cases were assigned to the undersigned and consolidated. The final

hearing on the pending petitions is scheduled for the month of July 2016.

2016 LEGISLATION

During the 2016 legislative session, the Medical Cannabis Act was amended. Chapter 2016-123 was created and reads, in pertinent part:

Section 3. (1) Notwithstanding s. 381.986(5)(b), Florida Statutes, a dispensing organization that receives notice from the Department of Health that it is approved as a region's dispensing organization, posts a \$5 million performance bond in compliance with rule 64-4.002(5)(e), Florida Administrative Code, and expends at least \$100,000 to fulfill its legal obligations as a dispensing organization; or any applicant that received the highest aggregate score through the department's evaluation process, notwithstanding any prior determination by the department that the applicant failed to meet the requirements of s. 381.986, Florida Statutes, must be granted cultivation authorization by the department and is approved to operate as a dispensing organization for the full term of its original approval and all subsequent renewals pursuant to s. 381.986, Florida Statutes. Any applicant that qualifies under this subsection which has not previously been approved as a dispensing organization by the department must be given approval as a dispensing organization by the department within 10 days after the effective date of this act, and within 10 days after receiving such approval must comply with the bond requirement in rule 64-4.002(5)(e), Florida Administrative Code, and must comply with all other applicable requirements of chapter 64-4, Florida Administrative Code.

(2) If an organization that does not meet the criteria of subsection (1) receives a

final determination from the Division of Administrative Hearings, the Department of Health, or a court of competent jurisdiction that it was entitled to be a dispensing organization under s. 381.986, Florida Statutes, and applicable rules, such organization and an organization that meets the criteria of section (1) shall both be dispensing organizations in the same region. During the operations of any dispensing organization that meets the criteria in this section the Department of Health may enforce rule 64-4.005, Florida Administrative Code, as filed on June 17, 2015.

The legislation was signed into law on March 25, 2016, by Governor Rick Scott.

The clear reading of the new law is that both Chestnut and San Felasco have now been approved as dispensing organizations in the Northeast region. Chestnut, by virtue of its initial approval by the Department, is approved without further review and is approved as a DO, so long as it complies with all the other requirements of law. San Felasco, as the applicant securing the highest point score during the Department's review, is approved without further review.

Loop's now finds itself in the position of being unable to challenge the approvals of Chestnut and San Felasco as dispensing organizations in the Northeast region. Loop's may, however, pursue approval of its own application pursuant to subparagraph (2) of Section 3 in the new law. If Loop's can show that "it was entitled to be a dispensing organization" in the instant proceeding, then it may also be approved. Although it is unclear how the Division of Administrative Hearings could make a "final determination" in this matter as DOAH has only recommended order authority in this case, it seems to be the intent of the Legislature to allow both a subparagraph (1) and a subparagraph (2) applicant to become dispensing organizations in the same region. Or, in the case of the Northeast region, for two subparagraph (1) applicants and one subparagraph (2) applicant could be approved. Based upon the foregoing, it is hereby,

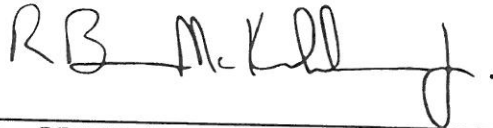
ORDERED that:

1. The Motion to Dismiss filed by Chestnut is Granted, and DOAH Case No. 15-7276 is closed and jurisdiction is released to the Department of Health;

2. DOAH Case No. 15-7268 is closed, sua sponte, as there are no remaining disputed issues of material fact and jurisdiction is released to the Department of Health; and

3. Loop's is granted leave to amend its petition in DOAH Case No. 15-7274 to seek an order deeming it "entitled to be a dispensing organization," but striking all challenges to the approvals of Chestnut and San Felasco.

DONE AND ORDERED this 10th day of May, 2016, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of May, 2016.

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