

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**BROTHELLA QUICK, et al.,**

**Plaintiffs,**

**v.**

**ILLINOIS DEPARTMENT OF  
FINANCIAL AND PROFESSIONAL  
REGULATION, et al.,**

**Defendants.**

Case No. 19-cv-7797

Judge Mary M. Rowland

**MEMORANDUM OPINION & ORDER**

Plaintiffs seek a license to open a medical marijuana dispensary. Their application for a license was denied and they brought suit against the Illinois Department of Financial and Professional Regulation (“IDFPR”) and Brett Bender, the head of the medical cannabis program for IDFPR. Before the Court is Defendants’ motion to dismiss. (Dkt. 8). For the reasons stated below, the motion [8] is granted as to Defendant IDFPR and denied as to Defendant Bender.

**BACKGROUND**

Plaintiffs Brothella Quick, Crystal Anderson, and Maria Davis are three entrepreneurs who applied for dispensary licenses under Illinois’ Compassionate Use of Medical Cannabis Act, 410 ILCS 130/1 *et seq.* (the “Act”). The individual Plaintiffs formed companies to hold the dispensary licenses: BQ Enterprises Inc., for Ms. Quick, and Crystal Clear Compassionate Care Inc., for Ms. Anderson and Ms. Davis. Plaintiffs’ briefing notes the relevant experience in the healthcare industry for each

Plaintiff. Each individual Plaintiff identifies as an African American woman, and Plaintiffs assert that African American women were, as a group, “entirely excluded from program [sic] when IDFPR awarded the licenses.” (Dkt. 15, 3).

According to Plaintiffs, the Act authorized up to 60 licenses for dispensaries, and the Act *obligated* IDFPR to issue as many licenses as there are qualified applicants. 410 ILCS 130/115(a). The Act states:

The [IDFPR] may not issue less than the 60 registrations if there are qualified applicants who have applied with the [IDFPR]. The organizations shall be geographically dispersed throughout the State to allow all registered qualifying patients reasonable proximity and access to a dispensing organization.

410 ILCS 130/155(a). The Act does not specify the process for geographically distributing dispensary locations but authorized IDFPR to adopt rules and procedures for applicants and for geographic diversity.

IDFPR created a plan to distribute 60 licenses among 43 districts. 68 Ill. Adm. Code § 1290.20. More populous districts received multiple licenses, while other districts received only one. *Id.* Pursuant to the newly promulgated rules, IDFPR required applicants to pick one of these districts for each application. 68 Ill. Adm. Code § 1290.50(a). Applicants were also required to prove that they controlled compliant property in the specified district. 68 Ill. Adm. Code § 1290.60(a) (16-17, 19). Defendants note that, pursuant to their rules, applicants could submit one application per district and could submit separate applications for up to five districts. 68 Ill. Adm. Code § 1290.40(a)(3), (5), (6). If more than one separate application was submitted, the applicant was required to pay the application fee for each submission

and comply with all other requirements for each submission. *Id.* Once an applicant was selected to receive a license, they were further required to complete a registration process. 68 Ill. Adm. Code § 1290.100. IDFPR rules allowed for a registered dispenser to relocate to another location within the same district, if IDFPR approved the move. 68 Ill. Adm. Code § 1290.140(a).<sup>1</sup>

Applicants received a license in a specified district in one of two instances. First, if the number of qualified applicants did not exceed the number of allocated licenses, then each qualified applicant would receive a license. (Dkt 5 ¶¶ 28-29); 68 Ill. Adm. Code § 1290.40(a)(11). For those districts with more qualified applicants than licenses, the IDFPR would hold a competition based on a points-scoring process. *Id.*

Plaintiffs allege that they timely completed their applications before the September 22, 2014 deadline, and their applications complied with all of the Act's requirements. (Dkt. 5 ¶ 36). IDFPR completed its scoring process and announced licenses in 2016. Plaintiffs did not receive a license. (*Id.* at ¶¶ 5-6). Plaintiffs first allege that the district and scoring process “proved problematic.” (Dkt. 15, 4). They claim that there were many diverse applicants like Plaintiffs who did not receive a license: “It is a matter of public record that IDFPR’s process resulted in almost all of the licenses going to companies majority-owned by white men.” (*Id.*; Dkt. 5, ¶ 7).

Second, Plaintiffs claim that IDFPR did not award all 60 licenses; it only issued 55. (Dkt. 5, ¶ 15). In four of the districts, no qualified applicants submitted

---

<sup>1</sup> IDFPR amended this rule in 2019 to allow dispensers who had not yet registered to seek relocation. (Dkt. 9, 7).

information confirming control of compliant property, and for one of the districts, there were fewer qualified applicants than allotted licenses. (*Id.*). Plaintiffs allege that IDFPR's failure to issue at least 57 licenses is a violation of the Act, because there were at least two additional qualified applicants, the Plaintiffs, beyond the 55 that the IDFPR selected. (Dkt. 5 ¶ 16). IDFPR rules provide for such a scenario, stating: "If the Division determines that a District has no qualified applicants or fewer qualified applicants than authorized registrations, the Division shall post a notification on the Division's website detailing the dates of the next open application period." 68 Ill. Adm. Code § 1290.4(a)(13). Based on this rule, Plaintiffs waited for IDFPR to announce a new application period. As of the date of Plaintiffs' brief, IDFPR had not yet posted a notification for how it intended to award the additional five licenses.

In 2019, Illinois passed a law giving special rights to the holders of the 55 medical marijuana licenses. Each license holder would automatically receive two additional licenses; one to sell recreational cannabis at the same location as the medical dispensary, and one to open another recreational cannabis dispensary at a site of their choosing. 410 ILCS 705/15-15, 15-20. The license holders had 60 days to complete the necessary paperwork to receive this benefit. Afraid of missing this additional benefit, both BQ Enterprises and Crystal Clear obtained property in a district where there were no qualifying applications during the 2014 application period. Plaintiffs then filed paperwork to change the address of their proposed dispensaries on their 2014 application to new properties situated in one of the five

districts in which a dispensary has not been licensed. On November 6, 2019, IDFPR issued a letter refusing to allow Plaintiffs to change the address on the grounds that there was no open application period at that time. All parties acknowledge that this letter was likely written by Defendant Bender. (Dkt. 16, 10).

Plaintiffs claim that IDFPR treated Plaintiffs differently than (at least) five other applications who had received licenses.<sup>2</sup> According to Plaintiffs, “[a]t least five of those [55 original winning applications] became eligible for a dispensary license only because IDFPR allowed them to change the address proposed dispensary location.” (Dkt. 5 ¶ 7). Plaintiffs claim that at least three companies were allowed to change to a new address within the district in which they applied, and two were allowed to change to new districts. (*Id.* at ¶¶ 31-35). Notably, Plaintiffs claim that IDFPR allowed these changes *after* the deadline for submission of the applications. (*Id.*). The crux of Plaintiffs’ allegations is that IDFPR Plaintiffs are entitled to a license because IDFPR was required to issue all 60 licenses.

Defendants contest whether Plaintiffs were indeed qualified applicants entitled to a license, claiming that Plaintiffs did not comply with IDFPR’s stated rules. IDFPR maintains that its rules did not permit Plaintiffs to change locations without filing another application during an open application period. As noted above, there has not been an open application period since the original 2014 period. And for the 2014 application period, Plaintiffs did not file an application in the new district

---

<sup>2</sup> Plaintiffs’ Complaint and brief often sounds in a denial of equal protection. In the joint status report Plaintiffs indicate they intend to file a motion to amend their Complaint to add additional Plaintiffs and an equal protection claim. (Dkt. 26, 2). Without objection, the Court grants Plaintiffs leave to amend their Complaint.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.