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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

WORD CANNABIS, LLC
Plaintiff

Case No: CV-20-934925

Judge: SHANNON M GALLAGHER

FILED
2021 SEP 13 P 3:06
CLERK OF COURTS
CUYAHOGA COUNTY

OHIO DEPARTMENT OF COMMERCE
Defendant

JOURNAL ENTRY

98 DISPOSED - FINAL

JUDGMENT ENTRY AND OPINION AFFIRMING THE OHIO DEPARTMENT OF COMMERCE'S FINAL ORDER.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

WORD CANNABIS)	CASE NO. CV-20-934925
Appellant)	
)	JUDGE SHANNON M. GALLAGHER
vs.)	
)	
)	<u>JUDGMENT ENTRY AND OPINION</u>
OHIO DEPARTMENT OF COMMERCE)	
Appellee)	

Shannon M. Gallagher, J.:

This matter is before the court on appellant Word Cannabis, LLC's appeal from the Final Order of the Ohio Department of Commerce denying appellant's application for a provisional license to process medical marijuana. This appeal is governed by R.C. Chapter 119. Based upon a review of the record, the court affirms the Department's Final Order denying Word Cannabis, LLC's application, and finds that the decision was based upon reliable, probative, and substantial evidence, and was made in accordance with law.

I. Procedural Background

On or about December 12, 2017, Word Cannabis submitted an application for a License to process medical marijuana to the Ohio Department of Commerce. Within thirty days the Department notified Word Cannabis of its intent to deny the application. Word Cannabis requested a hearing, which was held on July 10, 2019. At the hearing, Steve Gesis testified in his capacity as the Chief Operating Officer and 42 ½ percent owner of Word Cannabis, LLC. Sheri Zapadka testified in her capacity as one of the 3 scorers who scored each applicant's Quality Assurance Plan.

On October 7, 2019, the Hearing Officer issued his Report and Recommendation denying Word Cannabis' application. Word Cannabis timely submitted its objections to the Report and Recommendation. On July 2, 2020, the Department issued a Final Order denying the application. Word Cannabis subsequently filed its Notice of Appeal in this court. The Department has filed the certified record and all issues have been fully briefed.

II. Factual Background

On June 8, 2016 Ohio Governor John Kasich signed H.B. No. 523 creating the Medical Marijuana Control Program and legalizing medical marijuana in the State of Ohio. The law allows certain licensed facilities to cultivate medical marijuana, process it into medical products and then dispense it to the qualified patients. R.C. 3796.18-.21. The Department of Commerce issues licenses for medical marijuana cultivator facilities, processor facilities, and testing laboratories.

R.C. 3796 vests the Department with broad authority to establish rules and standards for the licensure of medical marijuana facilities. Pursuant to its authority, the Department developed an application process for issuing licenses for medical marijuana processing facilities. The application process was competitive, as the Department limited the number of Licenses to 40.

The application for a provisional License to process medical marijuana contained two sections. Only section 2 is at issue in this appeal. Section 2 included five separate plans. Each plan was scored separately by a three-person scoring team. The Department developed standardized scoresheets which helped scoring teams track which criteria each applicant had adequately demonstrated within each plan. Some of the criteria were required by rule, identified in Ohio Adm. Code 3796:3-1-02(B)(1)-(5) and Ohio Adm. Code 3796:3-1-03(B)(2)-(6), while

other criteria were not required by rule, but could add to the applicant's score. Applicants who failed to include rule-required criteria could not achieve any points for that plan.

If an applicant did not achieve 60% of all available points in any one of the five plans, the applicant was disqualified from receiving a license. All applicants received notice of this requirement within the Department's Request for Applications Instructions.

Word Cannabis was disqualified as an applicant because it received only 17 points for its Quality Assurance plan, which was just one point short of achieving the minimum requirement to qualify for a License.

III. Analysis

Appeals taken from an administrative agency's decision are governed by R.C. 119.12. A court may affirm an agency's order if it finds upon consideration of the entire record that the order is supported by reliable, probative, and substantial evidence, and is in accordance with law. A court must give due deference to the administrative resolution of evidentiary conflicts because the fact finder had the opportunity to observe the witnesses and weigh their credibility. *Unvi. Of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 111 (1980).

Word Cannabis argues three assignments of error: (1) The Department's decision to deny its application failed to apply the proper standard of review; (2) The Department failed to consider relevant evidence regarding the Quality Assurance within Word Cannabis' application but outside the Quality Assurance Plan; and (3) The Department failed to credit Word Cannabis for information that *was* included in the Quality Assurance Plan.

A. Assignment of Error 1

Word Cannabis argues that the Department's Final Order is flawed because it relies upon the Hearing Officer's Report and Recommendation, which applied the wrong standard of review.

Specifically, the Hearing Officer stated in his Report and Recommendation: “[t]hese administrative hearings are not de novo in nature, and some deference is clearly given the team assigned to score the applications.” Doc. 14, p. 22.

The Department agreed with Word Cannabis and stated in its Final Order that it disapproved of the Hearing Officer’s statement because he was supposed to apply a de novo standard of review during the hearing. The Department conducted its own independent de novo review of the record and did not defer to the opinions of the scoring team witness, Ms. Zapadka. Rather, it reached its own conclusion that the “Applicant failed to show that the Applicant’s score for the Quality Assurance Plan should be increased to equal or exceed the minimum required score of Eighteen (18).” Doc. 16, p. 2.

Therefore, the Department applied the proper standard when it reviewed the Report and Recommendation, and the Department’s Final Order was not contrary to law. Appellant’s first assignment of error is overruled.

B. Assignment of Error 2

Word Cannabis argues that the Final Order is contrary to law because it failed to consider relevant evidence regarding quality assurance within the application but outside the Quality Assurance Plan.

Mr. Gesis testified that he was unaware that the Quality Assurance Plan would be scored on its own without the scorer’s referencing the entirety of the application. During the hearing, Word Cannabis attempted to introduce content from its Operations Plan to support the argument that it should have received more points in the Quality Assurance Plan. Doc. 13, hearing transcript, p. 55-60.

However, the Department put applicants on notice within the application instructions, within the cover sheet for each plan, as well as within the administrative code rules that for purposes of scoring, the Department required each plan to stand on its own, without reference to any other plan. The scoring team that reviewed the Quality Assurance Plan did not have access to any other part of the applications. Doc. 13, hearing transcript, p. 155. The Department scored all applications using this so-called “silo” review process, so that Word Cannabis was on equal footing with all other applicants. Therefore, the Department’s refusal to consider evidence within the application but outside the Quality Assurance Plan for purposes of scoring the Quality Assurance Plan was not contrary to law. Appellant’s second assignment of error is overruled.

A. Assignment of Error 3

Finally, Word Cannabis argues that the Department’s Final Order was not supported by reliable, probative, and substantial evidence because Word Cannabis presented evidence at the hearing that the Quality Assurance Plan contained information that entitled Word Cannabis to at least one additional point.

During the hearing, Steve Gesis testified as to each subsection of the Quality Assurance Plan of the application, explaining as to why, from his perspective, the scorers should have awarded additional points. In response, Sheri Zapadka testified and provided a detailed explanation as to why the scores awarded to Word Cannabis were appropriate.

To the extent that Mr. Gesis’s testimony conflicts with Ms. Zapadka, this court must defer to the Department’s resolution of evidentiary conflicts. *See Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980). Accordingly, this court is unable to re-score Word Cannabis’s application, and can only determine whether the Final Order was supported by reliable, probative, and substantial evidence.

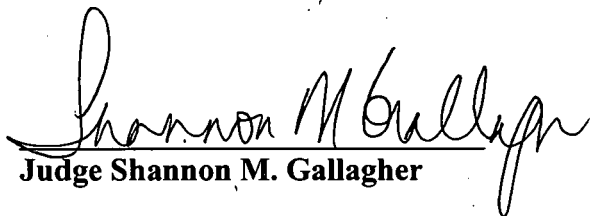
In its review of the application, the scoring rubrics, and the full hearing transcript, the court finds that the Final Order was indeed supported by reliable, probative, and substantial evidence. In particular, the court finds Ms. Zapadka's testimony to be reliable, probative, and substantial. She testified in detail as to her credentials and qualifications as a member of the Quality Assurance scoring team. Ms. Zapadka was uniquely qualified to review and score the Quality Assurance Plans due to her extensive pharmacy background and as a Compliance Specialist with the Board of Pharmacy. She also gave insight into the background and experience of the other two members of her scoring team, demonstrating that the three-member team was well-rounded and uniquely qualified to score the Quality Assurance Plans.

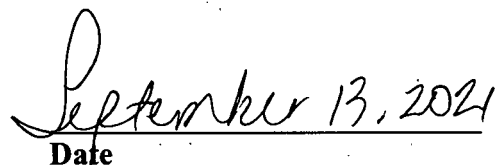
Based upon Ms. Zapadka's testimony as to the qualifications of the scoring team, the court finds that the scoring sheets are reliable evidence that appellant received the correct score for its Quality Assurance Plan. Although Mr. Gesis disagreed with the scores for each subsection, Mr. Gesis's testimony does not rebut the testimony of Ms. Zapadka to the extent that this court could conclude that the Final Order is not supported by reliable, probative, and substantial evidence. Therefore, appellant's third assignment of error is overruled.

IV. Conclusion

This court overrules all three assignments of error and affirms the Final Order of the Ohio Department of Commerce denying appellant Word Cannabis, LLC's application for a provisional license to process medical marijuana. Costs assessed to appellant Word Cannabis.

IT IS SO ORDERED:


Judge Shannon M. Gallagher


Date