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

STATE OF OHIO EX REL., GREENLEAF  
APOTHECARI, ET AL  
Plaintiff

THE STATE OF OHIO BOARD OF PHARMACY, ET  
AL.  
Defendant

Case No: CV-19-919261

Judge: NANCY A FUERST

**JOURNAL ENTRY**

THIS MATTER IS BEFORE THE COURT UPON THE COMPLAINT AND MOTION FOR WRIT OF MANDAMUS OF RELATOR GREENLEAF APOTHECARIES, LLC'S ("GREENLEAF") AND THE MOTION TO DISMISS OF RESPONDENTS STATE OF OHIO BOARD OF PHARMACY AND EXECUTIVE DIRECTOR OF THE STATE OF OHIO BOARD OF PHARMACY STEVEN SCHIERHOLT (COLLECTIVELY "THE BOARD"). ON 8/23/19, THE COURT CONDUCTED AN EVIDENTIARY HEARING.

GREENLEAF'S COMPLAINT IN MANDAMUS SEEKS TO COMPEL THE BOARD TO ISSUE GREENLEAF A CERTIFICATE OF OPERATION AT ITS PROVISIONALLY-LICENSED MEDICAL MARIJUANA DISPENSARY IN CLEVELAND, OHIO. SPECIFICALLY, GREENLEAF CONTENDS THAT THE BOARD'S REFUSAL TO ISSUE THE DISPENSARY A CERTIFICATE OF OPERATION VIOLATES OHIO ADM. CODE 3796:6-2-06. GREENLEAF WAS GRANTED FIVE PROVISIONAL LICENSES TO DISPENSE MEDICAL MARIJUANA.

A WRIT OF MANDAMUS IS DEFINED AS A WRIT, ISSUED IN THE NAME OF THE STATE TO AN INFERIOR TRIBUNAL, A CORPORATION, BOARD, OR PERSON, COMMANDING THE PERFORMANCE OF AN ACT WHICH THE LAW SPECIFICALLY ENJOINS AS A DUTY. R.C. 2731.01. TO OBTAIN A WRIT OF MANDAMUS, A RELATOR MUST ESTABLISH (1) THAT RELATOR HAS A CLEAR LEGAL RIGHT TO THE RELIEF PRAYED FOR, (2) THAT RESPONDENTS ARE UNDER A CLEAR LEGAL DUTY TO PERFORM THE ACTS, AND (3) THAT RELATOR HAS NO PLAIN AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF THE LAW. STATE EX REL. WESTBROOK V. OHIO CIV. RIGHTS COMM., 17 OHIO ST.3D 215, 215, 478 N.E.2D 799, (1985), QUOTING STATE EX REL. HARRIS V. RHODES, 54 OHIO ST.2D 41, 42, 374 N.E.2D 641 (1978). TO BE ADEQUATE, AN ALTERNATE REMEDY MUST BE COMPLETE, BENEFICIAL AND SPEEDY. STATE EX REL. DREAMER V. MASON, 115 OHIO ST.3D 190, 2007-OHIO-4789, 874 N.E.2D 510, 13.

"IT IS THE WELL-SETTLED GENERAL RULE IN OHIO THAT THE ISSUANCE OF A WRIT OF MANDAMUS RESTS, TO A CONSIDERABLE EXTENT AT LEAST, WITHIN THE SOUND DISCRETION OF THE COURT TO WHICH APPLICATION FOR THE WRIT IS MADE. THE WRIT IS NOT DEMANDABLE AS A MATTER OF RIGHT, OR AT LEAST IS NOT WHOLLY A MATTER OF RIGHT; NOR WILL IT ISSUE UNLESS THE RELATOR HAS A CLEAR RIGHT TO THE RELIEF SOUGHT, AND MAKES A CLEAR CASE FOR THE ISSUANCE OF THE WRIT. THE FACTS SUBMITTED AND THE PROOF PRODUCED MUST BE PLAIN, CLEAR, AND CONVINCING BEFORE A COURT IS JUSTIFIED IN USING THE STRONG ARM OF THE LAW BY WAY OF GRANTING THE WRIT. STATE EX REL. PRESSLEY V. INDUS. COMM., 11 OHIO ST.2D 141, 161, 228 N.E.2D 631 (1967).

GREENLEAF ARGUES THAT THE BOARD'S REFUSAL TO ISSUE A CERTIFICATE OF OPERATION TO GREENLEAF'S PROVISIONALLY-LICENSED, CLEVELAND DISPENSARY ("THE CLEVELAND DISPENSARY") IS CONTRARY TO THE OHIO ADMINISTRATIVE CODE SECTION GOVERNING THE FINAL INSPECTION OF A PROVISIONALLY-LICENSED DISPENSARY AND THE ISSUANCE OF A CERTIFICATE OF OPERATION. SEE OHIO ADM.CODE 3796:6-2-06. GREENLEAF CONTENDS THAT THE BOARD'S DEVIANCE FROM OHIO ADM.CODE 3796:6-2-06 AND THE PAST PRACTICE OF ISSUING CERTIFICATES OF OPERATION AFTER A SINGLE SUCCESSFUL INSPECTION AMOUNTS TO A REFUSAL TO CARRY OUT A MINISTERIAL FUNCTION TO ISSUE THE CERTIFICATE. GREENLEAF COMPLIED WITH THE PROCEDURES TO OBTAIN A FINAL INSPECTION AND CERTIFICATE OF OPERATION FOR THE CLEVELAND

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DISPENSARY AS PROVIDED UNDER OHIO ADM.CODE 3796:6-2-06.

TESTIMONY AT HEARING ESTABLISHED THAT THE CLEVELAND DISPENSARY, ON ITS FIRST FORMAL INSPECTION, PASSED THE MARCH 6, 2019 INSPECTION REPORT WITH "NO ISSUES FOUND." WHEN DISPENSARY AGENTS ATTEMPTED TO SUBMIT GREENLEAF'S INTENT TO OPERATE AND PAYMENT OF THE FEE FOR THE TWO-YEAR CERTIFICATE OF OPERATION VIA THE BOARD'S ONLINE PORTAL AS REQUIRED UNDER OHIO ADM.CODE 3796:6-2-06(C) IT WAS UNABLE TO DO SO. NO FORMAL WRITTEN NOTICE WAS INITIALLY PROVIDED TO GREENLEAF FOR THE DELAY OR DENIAL OF THE CERTIFICATE AND THE INTERNAL CHECKLIST INDICATES THAT THE MARCH 6TH INSPECTION WAS CONSIDERED A FINAL BY THE BOARD.

THE BOARD LATER REVEALED IT WOULD NOT ISSUE A CERTIFICATE OF OPERATION TO THE CLEVELAND DISPENSARY BECAUSE THE BOARD HAD CONCERNS RELATING TO THE OWNERSHIP OF GREENLEAF. THE BOARD CONCEDES THAT TWO OTHER GREENLEAF DISPENSARIES WERE GRANTED THE CERTIFICATE TO OPERATE AND CONTINUE TO DO SO. PURSUANT TO THE BOARD'S JUNE 2019 NOTICE TO GREENLEAF, THE BOARD INSTITUTED ADMINISTRATIVE PROCEEDING DEALING WITH THE OWNERSHIP ISSUE. THE BOARD CONCEDES THAT, BUT FOR THE ALLEGATIONS AS TO A POSSIBLE CHANGE OF GREENLEAF'S OWNERSHIP, GREENLEAF WOULD BE ISSUED ITS CERTIFICATE OF OPERATION.

THE COURT FINDS THAT IN LIGHT OF GREENLEAF'S COMPLIANCE WITH OHIO ADM.CODE 3796:6-2-06, IT HAS A CLEAR LEGAL RIGHT TO A CERTIFICATE OF OPERATION AND THE BOARD IS UNDER A CLEAR LEGAL DUTY TO ISSUE SAID CERTIFICATE. THE BOARD HAS FAILED TO COMPLY WITH ITS OWN REGULATION BY FAILING TO EITHER ISSUE THE CERTIFICATE UPON SATISFACTORY FINAL INSPECTION OR NOTIFY GREENLEAF OF NECESSARY CORRECTIVE ACTIONS" AS MANDATED UNDER OHIO ADM.CODE 3796:6-2-06(E).

THE COURT FINDS THAT THE BOARD'S FAILURE TO ISSUE GREENLEAF A CERTIFICATE OF OPERATION IS A FAILURE TO PERFORM A MINISTERIAL FUNCTION. A MINISTERIAL FUNCTION IS ONE IN WHICH A PERSON ACTS "WITHOUT REGARD TO OR THE EXERCISE OF HIS OWN JUDGMENT UPON THE PROPRIETY OF THE ACT BEING DONE." STATE EX REL. NORTHEAST OHIO SEWER DIST. V. OHIO ENVIRONMENTAL PROTECTION AGENCY, 8TH DIST. CUYAHOGA NO. 87928, 2007-OHIO-834, ¶ 11, QUOTING STATE EX REL. TRAUGER V. NASH, 66 OHIO ST. 612, 618, 64 N.E. 558, 559 (1902). A PLAIN READING OF OHIO ADM.CODE 3796:6-2-06 DOES NOT INDICATE THAT THE BOARD HAS DISCRETION TO ISSUE A CERTIFICATE OF OPERATION UPON COMPLETION OF THE FINAL INSPECTION.

THE COURT FINDS THAT GREENLEAF HAS NO PLAIN AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF THE LAW TO CHALLENGE THE BOARD'S REFUSAL TO ISSUE IT A CERTIFICATE OF OPERATION. THE BOARD ARGUES THAT GREENLEAF'S REMEDY LIES IN REQUESTING A HEARING FROM THE NOTICE LETTER, WHICH IS THE SUBJECT OF AN UPCOMING R.C. 119 ADMINISTRATIVE HEARING IN FRANKLIN COUNTY. HOWEVER, THE NOTICE LETTERS AND THE ATTENDANT ADMINISTRATIVE PROCEEDINGS RELATE TO THE POSSIBLE REVOCATION OR SUSPENSION OF GREENLEAF'S LICENSES AND NOT THE ISSUANCE OF A CERTIFICATE OF OPERATION TO THE CLEVELAND DISPENSARY. ADDITIONALLY, THE BOARD'S ARBITRARY ALLOWANCE TO CONTINUE TO OPERATE IN WICKLIFFE AND CANTON IS CONTRARY TO THE BOARD'S ARGUMENTS. THE BOARD DOES NOT CITE TO AN ADMINISTRATIVE PROCEEDING THROUGH WHICH GREENLEAF MAY CHALLENGE BOARD'S HESITANCE OR OUTHRIGHT REFUSAL TO ISSUE THE CERTIFICATE OF OPERATION.

IN LIGHT OF THE LACK OF AN AVAILABLE REMEDY TO GREENLEAF, THE COURT FINDS THAT IT HAS SUBJECT MATTER JURISDICTION TO ISSUE THE WRIT AND ACCORDINGLY, THE BOARD'S MOTION TO DISMISS IS DENIED. THE BOARD GENERALLY ARGUES THAT THIS COURT IS WITHOUT SUBJECT MATTER JURISDICTION BECAUSE THE ISSUANCE AND REVOCATION OF LICENSES IS WITHIN THE PROVINCE OF R.C. 119, AND THAT ANY DECISION BY THIS COURT WOULD BYPASS THE UPCOMING ADMINISTRATIVE HEARING IN FRANKLIN COUNTY ON THE 6/7/19 NOTICE LETTER. THE COURT FINDS THAT THIS IS NOT AN ADEQUATE REMEDY AS IT IS NOT COMPLETE, BENEFICIAL, AND WILL LIKELY NOT AFFORD SPEEDY RELIEF. THE BOARD DOES NOT CITE TO AN ADMINISTRATIVE REMEDY AVAILABLE TO GREENLEAF TO ADDRESS THE BOARD'S REFUSAL TO ISSUE THE CERTIFICATE OF OPERATION.

THE UPCOMING ADMINISTRATIVE HEARING REGARDING OWNERSHIP ISSUES CONCERN THE POSSIBLE

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SUSPENSION OR REVOCATION OF GREENLEAF'S LICENSES. THIS ISSUE IS SEPARATE AND DISTINCT FROM THE ISSUANCE OF THE CERTIFICATE OF OPERATION AND IS GOVERNED BY A DIFFERENT THE STANDARD OF PROOF. THE ISSUE PRESENTLY BEFORE THIS COURT IS THE BOARD'S REFUSAL TO ISSUE A CERTIFICATE OF OPERATION BASED UPON GREENLEAF'S COMPLIANCE WITH OHIO ADM.CODE 3796:6-2-06, AND A SATISFACTORY INSPECTION BY THE BOARD'S OWN ADMISSION AND EVIDENCE ADDUCED AT HEARING, THE CLEVELAND LOCATION DID IN FACT PASS ITS FINAL INSPECTION AND DOES NOT REQUIRE ANY FURTHER INSPECTION OR CORRECTIVE ACTION: THE BOARD IS THEREFORE UNDER A LEGAL DUTY TO ISSUE A CERTIFICATE OF OPERATION TO THE CLEVELAND DISPENSARY.

BASED ON THE FOREGOING, THE COURT HEREBY FINDS THAT RELATOR GREENLEAF HAS ESTABLISHED THE REQUIRED ELEMENTS FOR A WRIT TO ISSUE. THE WRIT OF MANDAMUS SHALL ISSUE. IMMEDIATELY UPON SERVICE OF THIS ORDER, THE RESPONDENTS STATE OF OHIO BOARD OF PHARMACY AND ITS EXECUTIVE DIRECTOR, STEVEN SCHIERHOLT, SHALL ISSUE TO GREENLEAF APOTHECARIES, LLC A CERTIFICATE OF OPERATION FOR ITS CLEVELAND, OHIO MEDICAL MARIJUANA DISPENSARY, FORTHWITH.

IT IS SO ORDERED.

NO JUST CAUSE FOR DELAY.

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.

*Nafuerst*

Judge Signature

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