

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
PUBLIC AND BEHAVIORAL HEALTH,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK
and THE HONORABLE DOUGLAS
SMITH, DISTRICT COURT JUDGE,

Respondents,

and

SAMANTHA INC. d/b/a
SAMANTHA'S REMEDIES, a domestic
corporation,

Real Party in Interest.

CASE NO.: 67423 Electronically Filed
Apr 20 2015 11:12 a.m.
Tracie K. Lindeman
District Clerk of Supreme Court
A-14-10874-J – Dept. No: VIII

**REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS OR IN THE
ALTERNATIVE PROHIBITION**

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Eighth Judicial District Court
DOUGLAS SMITH, Judge
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1 The Answer filed by the real party in interest provides no basis to find that the
2 Nevada Legislature created a right for a medical marijuana establishment applicant to
3 proceed under NRS 233B and further underscores why judicial review is not an
4 effective remedy in a competitive application process. SAMANTHA'S REMEDIES
5 clearly recognizes that they do not have a "legally protectable interest" in a medical
6 marijuana dispensary. *See*, Answer page 12. This is the crux for the argument of the
7 Division of Public and Behavioral Health (hereinafter "the Division") that the District
8 Court did not have jurisdiction to hear this petition for judicial review. The Nevada
9 Legislature did not provide for due process for the denial of a medical marijuana
10 establishment application through judicial review because there is no property interest at
11 issue. There is no "contested case" as defined by NRS 233B.032 for the purpose of
12 judicial review because the Nevada Legislature did not create any administrative
13 proceedings of notice and hearing to provide any due process for this revocable
14 privilege. SAMANTHA'S REMEDIES did not make any argument to distinguish this
15 case from *Private Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514, 654 (1982)
16 where this Court has already ruled that judicial review was not available for process
17 server's licenses denied by the Private Investigator's Board because the statutes did not
18 require notice and opportunity for hearing and thus, was not a "contested case."

19 Both the District Court and SAMANTHA'S REMEDIES assert that there should
20 be transparency in the application process and judicial review must be available to
21 challenge an administrative decision. However, when SAMANTHA'S REMEDIES
22 elected to apply for the revocable privilege of a medical marijuana dispensary
23 registration, they were aware that the Division would be ranking the applications
24 according to considerations set forth in NRS 453A.328 and the criteria set forth in
25 regulation and the announcement of the application process by the Division.
26 SAMANTHA'S REMEDIES was on notice that this was a competitive process where
27 other applicants could score better to receive the registration and the statutory
28 framework clearly did not provide for any right of appeal.

1 In their Answer, SAMANTHA'S REMEDIES indicates that it filed the petition
2 for judicial review because the Division would not provide a private consultation to
3 explain why SAMANTHA'S REMEDIES did not score as well as those dispensaries
4 that were selected in the City of Las Vegas.¹ See, Answer p 2 and 3. Not only is a
5 petition for judicial review an inappropriate use of Court resources to obtain information
6 on the application process but it further illustrates why the Nevada Legislature chose not
7 to provide for judicial review in these circumstances. Because the decision of the
8 Division in ranking the applications involves a comparison of all the eligible applicants,
9 the Division cannot replicate the process for either SAMANTHA'S REMEDIES or the
10 District Court. Because there was no administrative hearing process, the "record"
11 would not contain any records or testimony explaining how the decision was reached by
12 the agency. Meaningful judicial review is not feasible unless the District Court reviews
13 the decision making process on all the applications and those other applicants are not
14 part of this petition.

15 SAMANTHA'S REMEDIES clarifies that they construe the letter dated
16 November 18, 2014 from the Administrator of the Division to "All Affected
17 Governmental Jurisdictions" as the final decision of the agency for purpose of judicial
18 review instead of the letter sent on November 3, 2014 which notified SAMANTHA'S
19 REMEDIES that it was not selected.² See, Answer pages 3-4, Samantha's Remedies
20 Appendix p. 25. The November 18, 2014 letter to local governments clearly does not
21 fall within the definition of a "contested case" and therefore is not subject to judicial
22 review. The challenge of this letter suggest that SAMANTHA'S REMEDIES intends to
23 argue that the application period should be extended beyond the 90 day period provided
24 in statute so that SAMANTHA'S REMEDIES could be registered as a dispensary in the

26 ¹ The Division submits that any information about the application process must be made
27 available to all potential applicants to avoid even the perception of an unfair advantage
for SAMANTHA REMEDIES in any future competitive application periods.

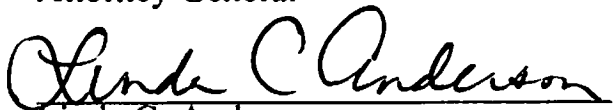
28 ² The Division raised the issue of the untimely filing of petition from the decision of the
agency not to select SAMANTHA REMEDIES on November 3, 2014 before the District
Court below but the Division continued to assert that the Court did not have jurisdiction
to hear the petition for judicial review at all.

1 City of Las Vegas if any of the twelve allotted dispensaries which have already been
2 registered do not proceed. The District Court cannot provide that type of relief through a
3 petition for judicial review and again no other registered dispensary is a party to the
4 proceeding.

5 Therefore, the District Court did not have subject matter jurisdiction to hear this
6 petition for judicial review and abused its discretion in denying the motion to dismiss.
7 The Division of Public and Behavioral Health requests this Court for the issuance of a
8 Writ of Mandamus or in the alternative, Prohibition, directing Respondent, the Eighth
9 Judicial District Court to cease further proceedings on the Petition for Judicial Review
10 filed on December 8, 2014 and grant the motion to dismiss filed by the Division.

11 DATED this 20th of April, 2015.

12 ADAM PAUL LAXALT
13 Attorney General

14 By: 
15 Linda C. Anderson
16 Chief Deputy Attorney General
17 Nevada Bar 4090
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