

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

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CHESTNUT HILL TREE FARM, LLC,

Petitioner,

vs.

CASE NO.

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

Respondents.

\_\_\_\_\_ /

**CHESTNUT HILL TREE FARM, LLC'S  
COUNTER-PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, Chestnut Hill Tree Farm, LLC (the "Petitioner" or "Chestnut Hill"), pursuant to sections 120.569, and 120.57(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code, petitions the Department of Health, Office of Compassionate Use (the "Office") for a formal administrative hearing to support the Office's November 23, 2015, decision to approve Chestnut Hill as the low-THC cannabis dispensing organization for the Northeast region of Florida and to support the Office's November 23, 2015, decision to deny San Felasco Nurseries, Inc.'s ("San Felasco") application for failing to meet the mandatory requirements of section 381.986(5)(b), Florida Statutes. In support of this Counter-Petition, Chestnut Hill shows the following:

**I. Agency Affected and Agency's File Numbers**

1. The affected agency is the Department of Health, Office of Compassionate Use, 2585 Merchants Row Blvd., Tallahassee, Florida 32399. The Office's file numbers for San Felasco's and Chestnut Hill's respective applications are unknown at this time.

2. Petitioner is supporting the Office's decision to approve Chestnut Hill as the low-THC cannabis dispensing organization for the Northeast region of Florida and the Office's decision to deny San Felasco's application. San Felasco's address is 7315 NW 126<sup>th</sup> Street, Gainesville, Florida 32653-2461.

## **II. Petitioner's Name, Address, and Telephone Number**

3. The Petitioner is Chestnut Hill Tree Farm, LLC. Chestnut Hill is located at 15105 NW 9<sup>th</sup> Avenue, Alachua, Florida 32615. For the purposes of this proceeding, the Petitioner's address and telephone number are that of its undersigned counsel.

## **III. Petitioner's Substantial Interests**

4. On November 23, 2015, the Office made the following decisions with respect to the applications to become a low-THC cannabis dispensing organization for the Northeast region of Florida:

- a. Approve Chestnut Hill's application;
- b. Deny Bill's Nursery, Inc.'s application for failing to obtain the highest score in the region;
- c. Deny Hart's Plant Nurseries, Inc.'s application for failing to obtain the highest score in the region;
- d. Deny Loop's Nursery and Greenhouses, Inc.'s application for failing to obtain the highest score in the region;
- e. Deny San Felasco's application for failing meet the mandatory minimum requirements of section 381.986(5)(b), Florida Statutes.

5. The Office issued notice of its decisions by mailing letters via certified mail to the applicants on November 23, 2015. The Office has also placed copies of the letters on its website.

The letters provide that affected persons may file a petition for hearing within 21 days of receipt of the letter.

6. On December 11, 2015, San Felasco filed a petition for formal administrative hearing challenging the Office's denial of its application and the Office's approval of Chestnut Hill's application. Chestnut Hill has standing to file this Counter-Petition because it is the approved applicant for the Northeast region, and its substantial interests have been directly affected by San Felasco's petition for formal administrative hearing.

7. Through this Counter-Petition, Chestnut Hill supports the Agency's denial of San Felasco's application. San Felasco's application and petition for formal administrative hearing adversely affect Chestnut Hill's substantial interests because approval of the application will adversely impact the Agency's approval of Chestnut Hill as the low-THC cannabis dispensing organization for the Northeast region of Florida.

8. San Felasco purported to receive the highest score of the applicants in the Northeast region but its application was denied for failure to meet the mandatory minimum requirements of section 381.986(5)(b), Florida Statutes. If San Felasco were to prevail on its challenge and its application reinstated, Chestnut Hill has preserved the right to challenge the Office's scoring of the applications submitted in the Northeast region through the timely filing of this Counter-Petition.

9. In the event Chestnut Hill's application is denied for failing to obtain the highest score in the Northeast region, Chestnut Hill demands a full comparative review hearing and challenges the approval of San Felasco's application, or the approval of any other application that was previously denied. Specifically, the Petitioner argues its low-THC cannabis dispensing organization application is superior to the applications filed by any other applicant in the

Northeast region that were previously denied, and best satisfies the statutory and rule review criteria set forth in section 381.986, Florida Statutes, and chapter 64-4, Florida Administrative Code.

#### **IV. Statement of Disputed Issues of Material Fact**

10. The disputed issues of material fact include, but are not limited to the following:
  - a. Whether San Felasco's application fails to meet the mandatory minimum statutory requirements;
  - b. The existence, identity, and accuracy of the statements, assumptions, and projections set forth in the low-THC cannabis dispensing organization applications filed in the Northeast region.
  - c. Whether the low-THC cannabis dispensing organization applications are consistent with the applicable criteria and standards set forth in section 381.986, Florida Statutes, and chapter 64-4, Florida Administrative Code.
  - d. Whether, on balance, Chestnut Hill's application best meets and satisfies all applicable statutory and rule criteria, and is comparatively more deserving of approval than the other applications in the Northeast region.
  - e. All statements of ultimate fact contained in the petition for formal administrative hearing filed by San Felasco or raised in any petitions filed by any other applicant.
  - f. Such other matters in relation to the merits of the application of each applicant as may be appropriate for consideration in a de novo formal administrative hearing.

#### **V. Concise Statement of Ultimate Facts**

11. Chestnut Hill's low-THC cannabis dispensing organization application should be approved in lieu of any other applications at issue in this proceeding.

## VI. Specific Statutes and Rules Requiring Approval of Agency's Proposed Action

12. The statutes and rules requiring final approval of Chestnut Hill's application are section 381.986, Florida Statutes, and chapter 64-4, Florida Administrative Code.

## VII. Relief Sought

WHEREFORE, Chestnut Hill requests the following:

A. The Office grant Chestnut Hill's request for a formal administrative hearing supporting the denial of the other applications submitted in the Northeast region and the approval of Chestnut Hill's application;

B. The matter be referred to the Division of Administrative Hearings for a formal hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, and consolidated with the other administrative proceedings involving the above-referenced applicants;

C. That a recommended order and final order be entered approving Chestnut Hill's application; and

D. The Office grant such further relief as may be deemed just and proper.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of December, 2015.

THE LOCKWOOD LAW FIRM  
106 East College Avenue, Suite 810  
Tallahassee, FL 32301  
Telephone: 850-727-5009  
Facsimile: 850-521-1980

*Attorneys for Petitioner*

By:   
\_\_\_\_\_  
John M. Lockwood, Esq.  
Florida Bar No. 28056  
john@lockwoodlawfirm.com  
Thomas J. Morton, Esq.

Florida Bar No. 13771  
tj@lockwoodlawfirm.com  
Kala Shankle, Esq.  
Florida Bar No. 11242  
kala@lockwoodlawfirm.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original Petition was filed with:

Agency Clark  
Department of Health  
2585 Merchants Row Blvd.  
Prather Building, Suite 110  
Tallahassee, Florida

*Via hand delivery*

and that a courtesy copy of the foregoing was served upon the following:

James A. McKee  
(jmckee@foley.com)  
Benjamin J. Grossman  
(bjgrossman@foley.com)  
Foley & Lardner, LLP  
106 E. College Ave.  
Suite 900  
Tallahassee, Florida 32301

*Via electronic mail*

Michael J. Glazer  
(mglazer@ausley.com)  
Dylan Rivers  
(drivers@ausley.com)  
Ausley McMullen  
Post Office Box 391  
Tallahassee, Florida 32301

*Via electronic mail*

J. Stephen Menton  
smenton@rutledge-ecenia.com  
Rutledge, Ecenia & Purnell, P.A.  
119 S. Monroe Street, Suite 202  
Tallahassee, Florida 32302

*Via electronic mail*

*Counsel for San Felasco Nurseries, Inc.*

Attorney 