

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of

FRIENDLY FLOWER 1 INC., FRIENDLY FLOWER  
2 INC., ROCKAWAY MOONSHOT LLC, HOP  
STOCK & BARRELL IV LLC, BK GREENERY  
LLC, EMERALDZ INC. and  
MARIAGIOVANNA LLC,

Petitioners,

For a Judgment Pursuant to CPLR Article 78

-against-

NEW YORK STATE CANNABIS CONTROL  
BOARD and NEW YORK STATE OFFICE  
OF CANNABIS MANAGEMENT,

Respondents.

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Petitioners FRIENDLY FLOWER 1 INC., FRIENDLY FLOWER 2 INC., ROCKAWAY  
MOONSHOT LLC, HOP STOCK & BARRELL IV LLC, BK GREENERY LLC, EMERALDZ  
INC. and MARIAGIOVANNA LLC (collectively herein, the “Petitioners”), by their attorneys,  
Helbraun & Levey, LLP, as and for their Verified Petition seeking relief against Respondents,  
NEW YORK STATE CANNABIS CONTROL BOARD (the “CCB”) and NEW YORK STATE  
OFFICE OF CANNABIS MANAGEMENT (the “OCM) (collectively herein, the “Respondents”),  
allege as follows:

Index No.

**VERIFIED PETITION**

## NATURE OF THE PROCEEDING

1. Petitioners bring this CPLR Article 78 proceeding against Respondents to challenge the process by which the Retail and Microbusiness Non-Provisional Adult-Use Application Queue, dated January 12, 2024 (the “Queue”), was created and will be reviewed.

2. To be clear, Petitioners are not challenging Respondents’ authority to establish the Queue pursuant to Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York adopted by the OCM on September 27, 2023 (the “Regulations”).

3. Rather, Petitioners seek transparency into how the OCM established the Queue and how it intends to review the Queue and ultimately issue adult-use cannabis retail licenses.

4. Petitioners have invested significant resources into applying for adult-use cannabis retail licenses during the October 4, 2023 and November 17, 2023 application period (the “First Application Period”). Petitioners also qualify as Social and Economic Equity (“SEE”) applicants under the Regulations.

5. In order to qualify to submit an application in the First Application Period, applicants were required to meet very stringent and burdensome requirements such as securing real estate rights because non-provisional licenses were intended for applicants that were more immediately ready to operate.

6. However, prior to issuing the Queue on January 12, 2024, neither the OCM nor the CCB disclosed the policies and procedures that it followed or intended to implement in its review process.

7. When the OCM published the Queue on January 12, 2024, it also disclosed in a footnote of the document, that it had made a decision to give “Extra Priority and Economic Equity

Applicants” seeking retail dispensary licenses (three chances per application in the lottery system to make the Queue).

8. The Respondents’ decision to summarily determine that certain applicants will get additional chances into the Queue, without disclosing it to the public prior to the First Application Period, is not only confusing, but also unclear, and suggests inconsistency in the establishment and implementation of the Queue.

9. Petitioners agreed to submit applications in the First Application Period pursuant to the policies and procedures articulated prior to their submission. Had Petitioners known that the rules were subject to change, they would have reconsidered submitting applications in the First Application Period due to the costly barrier to entry such submission required.

10. Upon information and belief, Respondents arbitrarily and capriciously created the Queue without utilizing or implementing any uniform policies or procedures to apply to all applicants.

11. As a result, Petitioners respectfully request this Court issue an order and judgment against the CCB and the OCM: (i) temporarily and preliminarily enjoining the Respondents from issuing any adult-use cannabis retail licenses through the conclusion of this proceeding; (ii) declaring the OCM and the CCB’s decision and selection of the Queue issued on January 12, 2024, to be arbitrary and capricious; (iii) requiring the Respondents to provide to the petitioner-applicants (as well as the public at large) the policies and procedures that were utilized in the creation and selection of the Retail and Microbusiness Non-Provisional Adult-Use Application Queue that was issued on January 12, 2024 (the “Queue”); (iv) requiring the Respondents to reissue a new queue for non-provisional adult-use cannabis retail and micro-business license applications that were previously submitted for review between October 4, 2023 and November 17, 2023 (the “First

Application Period”); (v) requiring the Respondents to apply the stated policies and procedures uniformly to all future queues for all adult-use cannabis retail licenses; (vi) awarding Petitioners’ costs, fees, and disbursements incurred in connection with this action; and (vii) for such other and further relief as this Court shall deem just and appropriate.

### **THE PARTIES**

12. Petitioner Friendly Flower 1 Inc. is a corporation organized and existing under the law of the State of New York, with its principal place of business located at 130 Water Street, New York, NY 10005.

13. Petitioner Friendly Flower 2 Inc. is a corporation organized and existing under the law of the State of New York, with its principal place of business located at 22 Spring Street, New York, NY 10012.

14. Petitioner Rockaway Moonshot LLC is a limited liability company organized and existing under the law of the State of New York, with its principal place of business located at 9519 Rockaway Beach Boulevard, Far Rockaway, New York 11693.

15. Petitioner Hop Stock & Barrell IV LLC is a limited liability company organized and existing under the law of the State of New York, with its principal place of business located at 339 Atlantic Avenue, Brooklyn, NY 11201.

16. Petitioner BK Greenery LLC is a limited liability company organized and existing under the law of the State of New York, with its principal place of business located at 611 Manhattan Avenue, Greenpoint, New York, 11222.

17. Petitioner Emeraldz Inc. is a corporation organized and existing under the law of the State of New York, with its principal place of business located at 3 Montebello Ct., Rotterdam Jct., New York 12150.

18. Petitioner MariaGiovanna LLC is a limited liability company organized and existing under the law of the State of New York, with its principal place of business located at 613 West 145<sup>th</sup> St., New York, New York 10031.

19. Upon information and belief, and at all times relevant to this action, Respondent CCB was and is a government-appointed board that was established by the Marijuana Regulation and Taxation Act (“MRTA”) in March 2021, in order to implement a regulatory framework for medical and adult-use cannabis and hemp in New York State.

20. Upon information and belief, and at all times relevant to this action, Respondent the OCM was and is an independent office that the MRTA established to exist under the oversight of Respondent CCB.

21. Petitioners are all majority female-owned entities which qualify as SEE applicants under the Regulations that submitted applications in the First Application Period.

### **JURISDICTION AND VENUE**

22. The Court has subject matter jurisdiction over this proceeding against Respondents pursuant to CPLR §§ 7801-7806 which permits judicial review of the actions of bodies or officers.

23. Venue is proper in Albany County pursuant to CPLR 506(b) and 7804(b), because the material events giving rise to this proceeding took place in Albany County and Respondents have principal places of business in Albany County.

### **LEGAL FRAMEWORK**

24. On March 31, 2021, MRTA was signed into law legalizing adult-use cannabis in New York State.

25. On September 27, 2023, the OCM adopted the Regulations.

26. Relevant portions of Part 120 of the Regulations, “Application and Licensure,” and Part 12, “Social and Economic Equity” state as follows:

**§ 120.7 Application Eligibility and Evaluation.**

*(c) Approval. The Board may approve licenses using mechanisms, including, but not limited to, scoring, compliance-based evaluation, qualified lottery, randomized ordering, or any combination thereof...*

*(3) Application submission, review, selection, and issuance may be prioritized by groupings consistent with section 87 of the Cannabis Law, such as:*

*(i) A group consisting only of applications that demonstrate the applicants are eligible for extra priority as defined in section 121.1 of this Title provided the applicant is seeking to qualify as a social and economic equity applicant...*

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**§121.1 Qualifications for a Social and Economic Equity Applicant.**

*(k) Extra Priority.*

*(1) A person who demonstrates that they are an individual from a community disproportionately impacted by the enforcement of cannabis prohibition may receive extra priority if:*

*(i) they have an income lower than eighty percent (80%) of the median income of the county in which the applicant resides; and*

*(ii) was convicted of a marijuana-related offense prior to the effective date of the Marijuana Regulation and Taxation Act, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of the Marijuana Regulation and Taxation Act, was convicted of a marijuana-related offense.*

*(2) For purposes of this subdivision, median income is defined as the median dollar amount per household in each county, as based on the overall income distribution for the county, from lowest to highest income.*

*(3) An applicant seeking to qualify for extra priority shall provide proof of residency, income, and conviction, as prescribed by the Board.*

**RELEVANT FACTS**

27. In or about September 2023, the CCB and the OCM announced the opening of two application periods for adult-use retail dispensary licenses. The First Application Period was from October 4, 2023 to November 17, 2023 and was strictly for non-provisional licenses, meaning licenses that would be issued for more immediate use. The second application period from October

2, 2023 to December 18, 2023, was strictly for provisional licenses which required additional criteria to be met in order to obtain a license in the future. These two application periods were only two opportunities to be awarded a New York State adult-use retail dispensary licenses. To date, no additional application periods have been announced by the OCM and the CCB.

28. All applications were required to be submitted by the stated deadline via Respondents' New York Business Express application website (the "NYBE").

29. Respondents required those applicants who wanted to apply in the First Application Period, including the Petitioners herein, to submit evidence of secured real estate location(s) for the proposed businesses as well as meeting other costly and burdensome requirements. If an applicant did not meet the requirements, the application would not be considered within the First Application Period.

30. On or about September 29, only six days before the First Application Period opened, 2023, the CCB and the OCM announced that applications would be reviewed via a randomized lottery system instead of a merit-based system.

31. The Queue was released to the public by the OCM on January 12, 2024 along with a notice that stated, among other things, that the Queue "was created using a random sequence process for non-provisional Adult-Use Microbusiness and Retail Dispensary applications, that applied in the application window ending on November 17, 2023, at 5:00PM" (the "Notice").

32. Furthermore, the Notice states,

"A single queue was created, providing the Office with the order in which to review Adult-Use applications. The random queue process was audited by an independent third-party to ensure it was random and unbiased... The queue order **solely** [*bolded and underlined in the Notice*] determined the order in which the Office will begin the review of each application. The order does **not** [*bolded and underlined in the Notice*] indicate the order in which licenses will be issued..." (hereinafter referred to as the "Lottery System").

33. As released, the Queue lists the application number, legal name, whether the applicant is a SEE applicant, and the applicant's review number.

34. At the end of the Queue, there is a section entitled "Notes," the first of which states: "\*Extra Priority Social and Economic Equity applicants for retail dispensary licenses received three chances in the queue."

35. Nowhere in the Regulations or on the applications themselves for non-provisional adult-use retail and microbusiness licenses was it indicated that applicants who qualify as "Extra Priority" would receive three chances in the Queue for every application filed.

36. At the time that Petitioners submitted their applications in the First Application Period, this policy had not been announced. Had Petitioners known that the rules were subject to change, they would have reconsidered submitting applications in the First Application Period due to the costly barrier to entry that each such submission required.

37. The implementation of this decision has raised several questions among the applicants and the general public surrounding the applications that have been listed in the Queue; the order in which those chosen applications sit; *whether particular applications are being reviewed more than once, and why*; if an application is being reviewed more than once, whether the same person is reviewing said application each time, and many others.

38. The lack of transparency from the Respondents with regard to how the Queue was created, and how it will be implemented has led Petitioners to believe that it was executed arbitrarily and capriciously to Petitioners' detriment. As such, the need for this application arose.



**IRREPARABLE HARM AND DAMAGE**

39. Petitioners have spent significant time and resources applying for adult-use retail dispensary licenses in this First Application Period with the understanding that said applications in this window would be reviewed first.

40. The First Application Period closed on November 17, 2023 and represents the only application period for an opportunity to obtain non-provision adult-use licenses in New York State.

41. Petitioners are not clear as to what selection process was used to create the Queue as well as what policies and procedures will be used to implement the Queue and issue adult-use retail dispensary licenses.

42. Petitioners have been afforded absolutely no clarity from the CCB and the OCM on which policies and procedures have been utilized and are to be utilized moving forward, including the number of adult-use retail licenses to be awarded.

43. Petitioners have been left up to the arbitrary whims of the CCB and the OCM as they wait for applications to be reviewed and licenses issued without transparency.

44. Petitioners are entitled to have clarity and certainty as to how the applications are being reviewed and issued.

**FIRST CAUSE OF ACTION:**  
**CCB AND OCM'S CREATION AND IMPLEMENTATION OF THE QUEUE**  
**WAS ARBITRARY AND CAPRICIOUS**

45. Petitioners repeat and reallege the allegations contained in the proceeding paragraphs.

46. Respondents' selection of the Queue and its implementation was unreasonable and lacks factual justification, and is therefore arbitrary and capricious.

47. The Respondents may have disclosed the “extra priority” designation in the Regulations, albeit with no transparency surrounding its effect; however, Respondents *never* stated that those who qualify as “extra priority” pursuant to § 121.1(k) of the Regulations, would be given *three opportunities per application* to enter the Queue.

48. Such decision appears to be completely arbitrary and lacking any factual foundation and reasoning that the OCM has now created (by way of a “footnote” released together the Queue).

49. This decision affords particular applicants more chances to draw better (i.e. lower) numbers within the Queue, which in turn presents them with the chance to be reviewed sooner and unfairly and inequitably increases the likelihood that they will be awarded an adult-use retail dispensary license.

50. The gravity of this action on the part of the Respondents to institute this new rule without announcing it to the public prior to the announcement of the First Application Period, as well as their inaction in disclosing the method and process by which the Queue was created, has impacted thousands of applicants (in addition to the general public as a whole, including attorneys; financial advisors; prospective applicants for further rounds of licensing, etc.) to their detriment.

51. Not only were the applicants (including the Petitioners) and the public never made aware that those who qualify for “extra priority” would be given three chances in the Lottery System to make the Queue, but it raises questions as to whether the Queue itself is grounded in any sort of policy or fact.

52. What element of checks and balances were in place by the OCM when it determined which applicants were to be given “extra priority” in the first place? What was the logical rationale behind giving the “extra priority” applicants three chances at the Queue, without any prior explanation to all applicants that such tactic would be administered? There are applicants with

“extra priority” who have multiple applications and all their applications somehow made the Queue three times – again, how? Moreover, what amount of licenses are going to be released? How is this number determined and on what basis? All such questions, and many others highlight the arbitrary, unclear, and confusing nature of how the Queue was created and how it will be implemented in the award of adult-use retail dispensary licenses.

53. Respondents have publicly announced that the OCM intends to move onto the second application period for those licenses that are strictly provisional, after a certain undisclosed number of licenses are awarded from the Queue, which only further exacerbates the fact that this is the only chance for those applicants (including Petitioners) that applied for the non-provisional adult-use retail dispensary licenses, who were incentivized to secure real estate and did so, to be awarded a retail license.

54. Logically, it would make sense to award a majority of the retail dispensary licenses to those in the First Application Period as those applicants have already invested resources in securing real estate as well as meeting other stringent criteria set forth by the CCB and the OCM and are in the best position to start operating retail locations in the shortest amount of time.

55. The questions surrounding the selection and execution of the Queue continue to highlight the ways that Petitioners were unfairly impacted by the arbitrary and capricious decision-making of Respondents.

56. As such, there is no question that the creation and implementation of the Queue is arbitrary, capricious, and unenforceable and this Court should so declare and order.

**NO PRIOR APPLICATION**

57. No prior application for the relief sought herein has been made.

**PRAYER FOR RELIEF**

**WHEREFORE**, Petitioners pray for a judgment against Respondents:

- a. Declaring the Queue arbitrary and capricious as it was issued without rational basis in fact or law, in excess of Respondents' jurisdiction and outside of the scope of its regulatory authority, and annulling the Queue in its entirety;
- b. Temporarily and preliminarily enjoining Respondents from awarding any adult-use cannabis retail licenses through the conclusion of this proceeding;
- c. Requiring the Respondents to provide to the Petitioner-applicants (as well as the public at-large) the exact policies and procedures that were utilized in the creation and selection of the Queue;
- d. Requiring the Respondents to reissue a new queue for non-provisional adult-use cannabis retail and micro-business license applications that were submitted for review during the First Application Period utilizing the stated policies and procedures by a date certain;
- e. Requiring Respondents to apply the stated policies and procedures uniformly to all future queues for all adult-use cannabis retail dispensary licenses;
- f. Awarding Petitioners' attorneys' fees and costs associated with this proceeding; and
- g. For such other and further relief as this Court shall deem just and appropriate.

Dated: January 29, 2024

Respectfully submitted,

**HELBRAUN & LEVEY, LLP**

By: /s/ Hamutal G. Lieberman

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