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WASHINGTON STATE  
SUPREME COURT

NO. 93254-9

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DOUGLAS L. MAXFIELD and  
MOUNTAIN VIEW ENTERPRISES, LLC,

Petitioner,

v.

WASHINGTON STATE LIQUOR AND CANNABIS BOARD,

Respondent.

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**BRIEF OF RESPONDENT LIQUOR AND CANNABIS BOARD**

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 ORIGINAL

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## I. INTRODUCTION

The Board correctly denied the retail marijuana application of appellant Mountain View Enterprises, LLC, because the company was not legally formed in the state of Washington at the time the application was filed. Mountain View Enterprises, LLC, which is appealing the Board's denial of its marijuana license application under the Washington Administrative Procedures Act, has failed to establish any legal error, and has not challenged the factual findings.

Under RCW 69.50.331(1)(c), any Limited Liability Company (LLC) applying for a recreational marijuana license must have been legally formed under Washington law at the time it applies for a license. Mr. Maxfield, Mountain View Enterprises, LLC's sole member, admitted at hearing that he had not filed the LLC formation documents with the Secretary of State as of the time the adjudicative hearing was held on the license denial appeal. The lawful formation of the LLC is a mandatory requirement, and under Washington law an LLC does not have the capacity to act until it is lawfully formed. Therefore, Mountain View Enterprises was not legally formed under Washington law, and had no legal capacity to act at the time the application for a marijuana license was filed in its name. The Board correctly denied the marijuana license application, and the Clallam County Superior Court correctly affirmed that

license denial. Petition for direct review to the Supreme Court should be denied, and the appeal of the denial of the petition for judicial review should also be denied.

## **II. ASSIGNMENTS OF ERROR**

The Board's decision denying Mountain View Enterprises, LLC's retail marijuana license application was correctly decided because RCW 69.50.331(1)(c) requires any Limited Liability Company applying for a recreational marijuana license to have been legally formed under Washington law at the time of application.

## **III. STATEMENT OF THE CASE**

Mountain View Enterprises, LLC, (Mountain View) filed an application with the Board for a recreational marijuana producer license. AR 115,121.<sup>1</sup> The Board denied the license, and Mountain View petitioned for judicial review of the Board's Final Order. AR 184-85. After hearing, Judge Stephen Smith entered an Initial Order affirming the denial because Mountain View was not legally formed under Washington law until after the administrative hearing. AR 334-46. Mountain View petitioned the Board for review, and the Board affirmed the Clallam

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<sup>1</sup> The citations are to the Administrative Record certified to the superior court with sequential page numbers at the center bottom of each page. The Board's Final Order is attached as Appendix 1 to this brief.

County Superior Court's decision, adopting the Administrative Judge's findings and conclusions.

At the hearing, the record established that Mountain View filed an application for a recreational marijuana producer license during the 30-day period in November and December, 2013, when the Board was receiving those applications. AR 115,121. Questioning from the Board's counsel and the Judge established that Mr. Maxfield never intended to apply himself, or through a sole proprietorship he had previously formed for a separate business. AR 154. Mr. Maxfield confirmed that Mountain View Enterprises was the sole applicant for the marijuana producer license. AR 154. He also confirmed that he never filed with the Secretary of State the documents necessary to legally form Mountain View Enterprises as an LLC under Washington law. AR 124,127. When asked at hearing what he had done to form the LLC, Mr. Maxfield testified that he had filed for a business license, obtained a UBI number, and that he had registered with the Department of Revenue to pay business taxes. AR 122-24. He also testified that he intended to file with the Secretary of State and that he was "working on formalizing the LLC," but that he had not completed that process because of other work he needed to do for the application, such as the business plan. AR 124, 127. Finally, Mr. Maxfield also testified that he did not intend to be the applicant or to

hold the license himself, and that he always intended Mountain View Enterprises, to be the applicant and to hold the license. AR 154.

The other issue considered during the hearing was whether Mr. Maxfield's spouse had resided in Washington for three months prior to the filing of the license application as required by RCW 69.50.331(1)(b), (c), and WAC 314-55-035; 314-55-020(7). Mr. Maxfield argued that since his spouse had resided in Washington for nearly 21 months several years before the license application was filed, she should be considered to have met that qualification. AR 134-36, 149. This issue was not reached in the Administrative Law Judge's Initial Order, in the Board's Final Order, or in the Clallam County Superior Court Order that affirmed the Board's Order.

The Administrative Law Judge, the Board, and Judge Coughenour of the Clallam County Superior Court all concluded that having failed to be legally formed under Washington law, Mountain View had no legal ability to act or to apply for the marijuana license, and that RCW 69.50.331(1)(c) required the LLC to be legally formed under Washington law in order to apply. AR 335, 341, Board Final Order, App. page 2. Those decisions were correctly decided under established law, and Mountain View Enterprises' appeal should be denied.

#### IV. ARGUMENT

##### A. Mountain View Enterprises Has Failed To Establish Any Error Of Fact Or Law

The Washington Administrative Procedures Act provides the sole means by which the actions of administrative agencies, such as the Board, are reviewed in the courts. RCW 34.05.510. Mountain View Enterprises as the party challenging the Board's Order denying the marijuana license application bears the burden of establishing an error or legal ground upon which this Court can grant relief.

Mountain View Enterprises has not challenged any of the facts alleged and proved in the adjudicative proceeding found by Judge Smith and relied upon by the Board in issuing the Final Order. Since there are no assignments of error to the facts, they are verities upon review by this Court. *Brown v. State Dep't of Health, Dental Disciplinary Bd.*, 94 Wn. App. 7, 972 P.2d 101 (1998).

As the party appealing the Board's order, Mountain View bears the burden of demonstrating that order's invalidity. RCW 34.05.570(1)(a). The Court applies the error of law standard to issues relating to whether the Board had statutory authority to act or whether it engaged in an unlawful decision-making process. Those legal issues are reviewed de novo, but courts grant substantial weight to an agency's interpretation of

its own regulations. *Tapper v. Emp. Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). The Court will give substantial weight to an agency's interpretation of an ambiguous statute that the agency administers, as long as the agency's interpretation does not conflict with the statute. *Pub. Util. Dist. 1 v. Dep't of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744 (2002); *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). This is especially true when the agency has expertise in a certain subject area. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 593-95, 90 P.3d 659 (2004); *Inland Empire Distrib. Sys., Inc. v. Utils. & Transp. Comm'n*, 112 Wn.2d 278, 282, 770 P.2d 624 (1989). Equally substantial weight is given to an agency's interpretation of rules the agency has promulgated. *Verizon NW v. Wash. Emp't Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

Mountain View must establish that the conclusions of law reached by Judge Smith and adopted by the Board constitute legal error, AR 335, 341, Board Order, App. page 2. Mountain View Enterprises has failed to do so.

**B. Mountain View Enterprises LLC Was Not Formed Legally When The Application Was Filed Thus The Application Was Not Complete Or Valid**

Both Judge Smith and the Board correctly concluded that the Limited Liability Company Applicant, Mountain View Enterprises, was

never lawfully formed, that it lacked the legal capacity both to make application for a marijuana producer license in the first place and to appeal the decision to deny its application. AR 335, Board Order, App. page 2. Those decisions were both factually and legally correct, and the Board's Final Order should be affirmed.

In Washington, both the formation of a Limited Liability Company and its ability to operate are controlled by statute. *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 187, 207 P.3d 1251 (2009). John Morey Maurice, *Operational Overview of the Washington Limited Liability Company Act*, 30 Gonz. L. Rev. 183, 187-88 (1994-95). An LLC comes into existence when its certificate of formation is filed with the Office of the Washington Secretary of State. RCW 25.15.071, *Chadwick, supra*, 166 Wash.2d at 187, 30 Gonz. L. Rev. at 188. The executed original of the certificate, along with a duplicate must be delivered to the Secretary of State for filing and, once the certificate has been filed, the LLC is considered a separate legal entity. *Id.* Only limited liability companies formed in compliance with state law may conduct business as a limited liability company. RCW 25.15.031. The Certificate of Formation must be filed with the Office of the Secretary of State. RCW 25.15.071. "If the Secretary of State determines the documents conform to the filing provisions, he or she shall . . . endorse on each signed original and duplicate copy the word 'filed' and the date of its acceptance for filing . . . ." RCW 25.15.071. The Certificate of Formation is effective on the date the document is filed by the Secretary of State unless a later date

(which cannot be later than the ninetieth day after the date it is filed) is provided for in the Certificate of Formation. RCW 25.15.071. Because formation documents were not submitted for Mountain View until after the appeal hearing, it did not come into existence or legally conduct business until long after the attempt to apply for a license in its name.

Under Board statutes and regulations, the license applicant is the “business entity” applying for the license. WAC 314-55-010(1). Mr. Maxfield testified that Mountain View Enterprises was the Applicant. Since it did not exist as a matter of law when the application was filed or when the deadline for filing applications passed, Judge Smith correctly ruled that it could not legally apply for a marijuana license. AR 154, 124-27. All limited liability companies applying for a license must be formed under the laws of Washington. WAC 314-55-020(7), RCW 69.50.331(1)(c). Mr. Maxfield admitted that in November, 2013, when it applied for a marijuana license, Mountain View Enterprises, had not been formed as an LLC under Washington law. WAC 314-55-075(4), AR 154. Both because it was not legally formed under Washington law and because a limited liability company not legally formed does not have the legal ability to act, Mountain View Enterprises, could not apply for a marijuana license or legally appeal the Board’s denial of its license application.

Mr. Maxfield argued in various ways that the forms he filed with the Department of Revenue constitute forming his Limited Liability Company, but he is incorrect. As argued above, the only way to legally

form a Limited Liability Company under Washington law is to file the formation documents with the Secretary of State, and he admittedly did not comply with this requirement until after July 9, 2014. AR 122-24.

Mr. Maxfield attempted to complete the formation of the LLC following the administrative hearing on July 9, 2014, on his appeal of the proposed denial of Mountain View's application for a license. However, that formation cannot and does not relate back to when the marijuana license application was filed in December, 2013. AR 142. RCW 25.15.071. By state statute, the LLC comes into existence when the Certificate of Formation is accepted for filing by the Secretary of State, or up to 90 days after its acceptance for filing. RCW 25.15.071, 23.95.210. It cannot be formed prior to the date the Certificate of Formation is accepted for filing by the Secretary of State. *Id.* Mr. Maxfield filed a Certificate of Formation with his Petition for Review, and that document confirms that his LLC was formed as of August 6, 2014. AR 359. Although Mr. Maxfield has attempted to create an earlier formation date by putting November, 2013 into the form as the specified formation date, both the form itself and the statute state clearly that the formation date is either the date of filing by the Secretary of State or a date selected that is within 90 days AFTER that filing. RCW 25.15.071, 23.95.210. The formation date cannot be earlier than when the Certificate was accepted for filing by the Secretary of State, and that had not occurred when the Board received this license application. It had not occurred when the deadline for filing applications passed in December,

2013. Similarly, the LLC did not exist when the request for hearing to contest the decision to deny the license application was filed.

Because Mountain View Enterprises did not legally exist and had no legal authority to act when the application was filed; when the time for filing applications ended; as of the date of the hearing; or until August 6, 2014; it cannot be the Applicant, and neither the application nor the request for hearing could be filed in its name. The Board's Final Order correctly denied the license application, and it should be affirmed.

**C. Mr. Maxfield's Arguments About Plain Language Are Incorrect**

Mr. Maxfield argues on pages 2-3 of his brief that neither Washington's marijuana laws nor the related regulations specify that the limited liability company that applies for a marijuana license must have been formed under Washington law. He is not correct. Under RCW 6.50.331(1)(c), any entity, including corporations and other business forms, that applies for a marijuana license must demonstrate that it has been legally formed under Washington law as a prerequisite to the Board issuing it a marijuana license. The regulation Mr. Maxfield cites, WAC 314-55-010(3), which defines "business" or "trade" name does not, and cannot, negate the statutory requirement that the applying entity must be lawfully formed under Washington law. Similarly, obtaining a UBI (Uniform Business Identifier) number or registering with the Department of Revenue to pay business taxes does not establish that the limited

liability company was lawfully formed, and Mountain View Enterprises, was not so formed at the time the application was submitted and denied.

**D. The Court Need Not Reach The Issue Of Whether Mr. Maxfield's Spouse Met The Washington Residency Requirement**

The application was also denied because Mr. Maxfield's spouse did not reside in Washington during the three months prior to the application being filed. Because Judge Smith, the Board, and Judge Coughenour decided the case on the alternative ground that the Limited Liability Company did not legally exist, none of them reached the residency issue. AR 335. Accordingly, this Court similarly should not consider this issue.

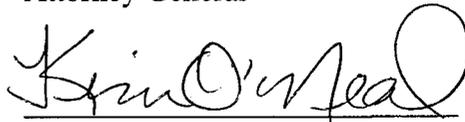
**V. CONCLUSION**

The Board correctly denied Mountain View Enterprises, LLC's application for a marijuana producer license because its sole member, Mr. Maxfield, did not form it under Washington law prior to submitting the producer application or before his application was denied. The limited liability company was not formed until after the administrative hearing on the appeal, so it was not legally qualified to apply for a license under RCW 69.50.331(1)(c), and it was not legally qualified to act under Washington's laws on limited liability companies. RCW 25.15.030. The

Board properly denied the marijuana license application on this basis.  
Mr. Maxfield has not established any error or law, and the denial of the  
application should be upheld.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of January, 2017.

ROBERT W. FERGUSON  
Attorney General



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BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

DOUGLAS L. MAXFIELD d/b/a  
MOUNTAIN VIEW ENTERPRISES LLC  
252 MAXFIELD HOMESTEAD RD  
FORKS, WA 98331

Mailing Address:  
PO Box 663  
Forks, WA 98331-0663

APPLICANT

LICENSE APPLICATION NO. 413168

LCB NO. M-24,979  
OAH NO. 2014-LCB-0028

FINAL ORDER OF THE BOARD

The above-captioned matter coming on regularly before the Board, and it appearing that:

1. The Licensing Division of the Liquor Control Board issued a letter to the applicant dated January 27, 2014 which provided notification that the application was being administratively withdrawn due to the fact that the spouse listed on the application was not a Washington State resident.
2. The Applicant timely filed an appeal. The case was originally set as a Brief Adjudicative Proceeding, but was converted to a formal adjudicative hearing by order dated March 19, 2014.
3. On July 9, 2014, a hearing took place before Administrative Law Judge Steven C. Smith with the Office of Administrative Hearings. The Licensing Division appeared through

FINAL ORDER OF THE BOARD  
LCB NO. M-24,979  
MOUNTAIN VIEW ENTERPRISES LLC  
LICENSE APPLICATION NO. 413168

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Assistant Attorney General Kim O'Neal. The Applicant, Mountain View Enterprises, LLC, appeared through Douglas L. Maxfield, who presented himself as the managing member of Mountain View Enterprises, LLC.

4. On August 22, 2014, Administrative Law Judge Steven C. Smith issued his Findings of Fact, Conclusions of Law & Final Order, dismissing the administrative appeal, because Mountain View Enterprises did not exist as an entity. Based on the Applicant's lack of lawful capacity to appeal the Board's action, the withdrawal of its marijuana licensing application by the Liquor Control Board's Licensing Division was upheld.

5. On September 11, 2014, the Applicant filed a Petition for Review of Initial Order. The Licensing Division filed a Response to Petition for Review on September 25, 2014, citing that the Petition was not received by the Office of Attorney General until September 18, 2014.

6. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are AFFIRMED AND ADOPTED as the Findings of Fact, Conclusions of Law and Final Order of the Board for case M-24,979.

IT IS HEREBY FURTHER ORDERED that license application for Marijuana Producer (tier 3) for DOUGLAS L. MAXFIELD D/B/A MOUNTAIN VIEW ENTERPRISES, LLC is WITHDRAWN, and the appeal is DISMISSED.

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The Financial Division is directed to re-issue payment for replacement of check 427742F which was voided and returned by the Applicant. This is for a \$500.00 refund of application fees to Douglas L. Maxfield d/b/a Mountain View Enterprises, LLC.

DATED at Olympia, Washington this 18 day of November, 2014.

WASHINGTON STATE LIQUOR CONTROL BOARD

Sharon Foster

Debra K. Kuerste

Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Mary M. Tennyson, Senior Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5).

The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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WASHINGTON STATE LIQUOR  
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Respondent.

DECLARATION OF  
SERVICE

I certify that I served a true and correct copy of Brief of Respondent Liquor and Cannabis Board on all parties or their counsel of record on the date below as follows:

DOUGLAS L. MAXFIELD, CEO  
MOUNTAIN VIEW ENTERPRISES  
PO BOX 663  
FORKS, WA 98331

- U.S. mail via state Consolidated Mail Service (with proper postage affixed)
- courtesy copy via electronic mail: maxfielddl72@gmail.com
- ABC/Legal Messenger

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of January, 2017, at Olympia, Washington.

  
\_\_\_\_\_  
JEANNE ROTH  
Legal Assistant