

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DOUGLAS L. MAXFIELD, CEO;
MOUNTAIN VIEW ENTERPRISES, LLC,

Appellant,

v.

STATE OF WASHINGTON, LIQUOR
CONTROL BOARD,

Respondent.

No. 50368-9-II

UNPUBLISHED OPINION

WORSWICK, P.J. — Douglas L. Maxfield appeals the dismissal of his applications to produce and process marijuana. He filed two applications with the Washington State Liquor Control Board (Board), listing Mountain View Enterprises LLC (Mountain View) as the applicant. The Board administratively withdrew Maxfield's applications because Maxfield's spouse had not resided in Washington for three months prior to the time the applications were filed. Maxfield appealed, and after an adjudicative hearing, the Board issued a final order affirming the withdrawal of Maxfield's applications and dismissing his appeal because Mountain View was not a legally formed limited liability company (LLC). The Board did not reach Maxfield's spouse's residency issue.

Maxfield appeals, arguing that the Board erred in affirming the withdrawal of his applications to produce and process marijuana because (1) former RCW 69.50.331 (2013) does not require that an LLC be completely formed before submitting the applications and (2) his spouse had resided in Washington for three months prior to the time the applications were filed,

as required by the plain language of former WAC 314-55-020 (2013). We affirm the Board's final order withdrawing Maxfield's applications to produce and process marijuana and dismissing his appeal, and we do not review the issue of Maxfield's spouse's residency.

FACTS

In 2013, Maxfield submitted two applications on behalf of his company, Mountain View, for licenses to both produce and process marijuana.¹ Maxfield had not filed Mountain View's certificate of formation with the secretary of state at the time he submitted the applications. In January 2014, the Board notified Maxfield that it had administratively withdrawn Mountain View's applications because Maxfield's spouse had not resided in Washington for three months prior to the time Maxfield filed the applications.² Maxfield appealed the Board's withdrawal of his applications.

¹ Former RCW 69.50.325(1)-(2) (2013) provides for a marijuana producer's license and a marijuana processor's license. Former RCW 69.50.331 (2013) governs the Board's consideration of applications for marijuana producers' and processors' licenses.

² Former WAC 314-55-020(7) (2013), which is authorized in part by former RCW 69.50.325 and former RCW 69.50.331, provides:

Per RCW 69.50.331(1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement.

"Member" includes the spouse of an LLC member or CEO (chief executive officer). Former WAC 314-55-010(12) (2013).

The Board conducted an adjudicative hearing. After the hearing, Maxfield submitted a certificate of formation to the Board. This certificate did not contain a stamp from the secretary of state or any other indication that it had been filed.³

Later, the Board issued findings of fact, conclusions of law, and an initial order. The Board concluded that to form a valid LLC under Washington law, an LLC member must file a certificate of formation with the secretary of state. Because Maxfield had not filed a certificate of formation for Mountain View, the Board concluded that Mountain View was a nonexistent LLC.

The Board also determined that, under former RCW 69.50.331, a marijuana producer and processor's licenses may be issued only to an existent business entity formed under Washington law. As a result, the Board concluded that the issue of Maxfield's spouse's residency was moot, and it did not reach the merits of that issue. The Board ultimately affirmed the administrative withdrawal of Maxfield's applications and dismissed his administrative appeal, reasoning that because Mountain View was a nonexistent LLC, it did not have the lawful capacity to appeal the Board's administrative withdrawal of the applications.

Maxfield sought administrative review of the Board's initial order. The Board then issued a final order which adopted and affirmed the findings of fact, conclusions of law, and initial order, and it dismissed Maxfield's appeal. Maxfield obtained judicial review of the

³ Following the passage of Initiative 502, which legalized the use and production of recreational marijuana, the State permitted individuals and companies to file applications to produce or process marijuana for a thirty-day period between November and December 2013. *See* former WAC 314-55-020. Maxfield did not file a certificate of formation with the secretary of state at this time. Instead, Maxfield purportedly filed the certificate in July of 2014.

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Board's final order, and the superior court adopted and affirmed the Board's findings of fact, conclusions of law, and initial order and affirmed the Board's final order.

Maxfield appealed to the Washington Supreme Court, which transferred the case to this court for review.

ANALYSIS

Maxfield argues that the Board erred in affirming the withdrawal of his applications to produce and process marijuana because (1) former RCW 69.50.331 does not require that an LLC be completely formed before submitting the applications and (2) his spouse had resided in Washington for three months prior to the time the applications were filed, as required by the plain language of former WAC 314-55-020. The Board contends that we should not reach Maxfield's argument regarding his spouse's residency. We agree with the Board and affirm the Board's final order withdrawing Maxfield's applications to produce and process marijuana and dismissing his appeal.

A. *Legal Principles*

Judicial review of a decision by the Board is governed by the Administrative Procedure Act (APA), chapter 34.05 RCW. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015). Under the APA, we may reverse the Board's action where the Board has erroneously interpreted or applied the law. RCW 34.05.570(3)(d); *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000). The party challenging the Board's decision bears the burden of proving the invalidity of the decision. RCW 34.05.570(1)(a); *Postema*, 142 Wn.2d at 77. We review whether the Board erroneously applied the law de novo. *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*,

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164 Wn.2d 329, 341, 190 P.3d 38 (2008). Where, as here, the challenging party does not assign error to any of the Board's findings of fact, they are considered verities on appeal. *Musselman v. Dep't of Soc. & Health Servs.*, 132 Wn. App. 841, 846, 134 P.3d 248 (2006). We review the Board's conclusions of law de novo to determine whether it correctly applied the law.⁴ *Freeman v. Dep't of Soc. & Health Servs.*, 173 Wn. App. 729, 738-39, 295 P.3d 294 (2013).

B. *Formed LLC Requirement*

Maxfield argues that the Board erred in affirming the withdrawal of his applications to produce and process marijuana because former RCW 69.50.331 does not require that an LLC be completely formed before submitting the applications. Although not expressly stated, it appears that Maxfield contends that the Board erroneously applied former RCW 69.50.331 in dismissing his appeal. We disagree.

We review questions of statutory interpretation de novo. *Ass'n of Wash. Spirits & Wine Distribs.*, 182 Wn.2d at 350. In interpreting a statute, we first look to its plain language. *See* 182 Wn.2d at 350. To determine the plain meaning of a statute, we look at the context of the statute, related provisions, and the statutory scheme that authorizes the statute. 182 Wn.2d at 350. If the statute's language is subject to more than one reasonable interpretation, it is ambiguous. *Wash. Rest. Ass'n v. Wash. State Liquor Control Bd.*, 200 Wn. App. 119, 127, 401 P.3d 428 (2017). However, if the statute is unambiguous, we must give effect to its plain meaning as an expression of legislative intent. 200 Wn. App. at 127.

⁴ We review the Board's final order, rather than the superior court's decision, and we sit in the same position as the superior court. *Freeman v. Dep't of Soc. & Health Servs.*, 173 Wn. App. 729, 736, 738, 295 P.3d 294 (2013). Because the Board's final order adopted and affirmed the findings of fact and conclusions of law in its initial order, we review the conclusions of law in the Board's initial order to determine whether the Board correctly applied the law.

Former RCW 69.50.331(1)(c) provides that “[n]o license of any kind may be issued to . . . [a] partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this state.” By its plain language, former RCW 69.50.331(1)(c) states that a marijuana license will not be issued to a corporation or LLC that has not been formed under Washington law. This language is clear and unambiguous. Accordingly, former RCW 69.50.331(1)(c) prescribes that only a formed corporation or LLC may be issued a marijuana producer’s or processor’s license.

In Washington, the formation of an LLC is governed by statute. *Chadwick Farms Owners Ass’n v. FHC, LLC*, 166 Wn.2d 178, 187, 207 P.3d 1251 (2009); *see* former RCW 25.15.070 (2010). “To form a[n LLC], one or more persons must execute a certificate of formation which must be filed in the office of the secretary of state.” *Chadwick Farms Owners Ass’n*, 166 Wn.2d at 187 (citing former RCW 25.15.070(1) (1994)). An LLC does not come into existence until it files its certificate of formation. 166 Wn.2d at 187.

The Board found that Maxfield submitted applications to the Board for his company, Mountain View, to obtain licenses to both produce and process marijuana. The Board also found that Maxfield had not filed a certificate of formation for Mountain View with the secretary of state at the time he submitted the applications. The Board concluded that “at no time relevant to this administrative appeal did Mountain View Enterprises LLC exist, because no certificate of formation had been filed with the Washington Secretary of State.” *In re Mountain View Enterprises, LLC*, No. 2014-LCB-0028, at 8-9 (Wash. Liquor Control Bd. Nov. 5, 2014). The Board also concluded that because Mountain View had not filed its certificate of formation, it

had not been formed under Washington law and it could not receive either a marijuana producer's or a marijuana processor's license under former RCW 69.50.331.

Maxfield fails to meet his burden in establishing that the Board erroneously applied former RCW 69.50.331 in concluding that Mountain View could not receive either a marijuana producer's or a marijuana processor's license. Former RCW 69.50.331(1)(c) states that only a formed corporation or LLC may be issued a marijuana producer's or processor's license. To form an LLC in Washington, a certificate of formation must be filed with the secretary of state. Maxfield did not file a certificate of formation for Mountain View. As a result, Mountain View had not been formed under Washington law. *Chadwick Farms Owners Ass'n*, 166 Wn.2d at 187. Accordingly, the Board properly concluded that Mountain View could not receive a license under former RCW 69.50.331. Thus, the Board properly applied former RCW 69.50.331 in affirming the withdrawal of Maxfield's applications.⁵

C. *Residency Requirement*

Maxfield also argues that the Board erred in affirming the withdrawal of his applications to produce and process marijuana because his spouse had resided in Washington for three months prior to the time the applications were filed, as required by the plain language of former WAC 314-55-020. The Board contends that this court should not reach Maxfield's argument regarding his spouse's residency because the Board did not make a determination on this issue. Because whether Maxfield filed an application for an existent LLC is dispositive, we do not

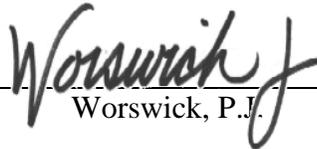
⁵ We also note that because Mountain View was a nonexistent LLC, it did not have the legal capacity to apply for either a marijuana producer's or processor's license. *See White v. Dvorak*, 78 Wn. App. 105, 109-10, 896 P.2d 85 (1995).

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reach the question of whether Maxfield's spouse met the residency requirement under former WAC 314-55-020.

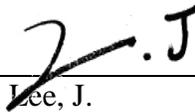
We affirm the Board's final order withdrawing Maxfield's applications to produce and process marijuana and dismissing his appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

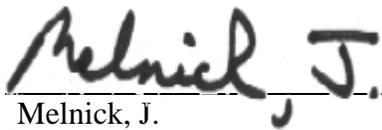


Worswick, P.J.

We concur:



Lee, J.



Melnick, J.