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### Dep't of Health & Human Serv.'s v. Samantha Inc., 133 Nev. Adv. Op. 100 (Dec. 14, 2017)

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ADMINISTRATIVE LAW: JUDICIAL REVIEW UNDER THE NEVADA  
ADMINISTRATIVE PROCEDURE ACT

**Summary**

Under the Nevada Administrative Procedure Act (APA)<sup>2</sup>, the right to petition for judicial review is limited to contested cases. When Nevada's Department of Health and Human Services (the Department) denies an applicant a registration certificate to operate a medical marijuana dispensary, it is not a contested case under the APA. Since it is not a contested case, the applicant cannot petition the court for judicial review.

**Background**

The Department includes the Division of Public and Behavioral Health, Medical Marijuana Establishment Program. Applications to operate medical marijuana dispensaries are evaluated by the Department. Following the Department's evaluation, the highest ranked applicants are issued registration certificates until the number of available permits run out. If the applicant is successful, then the Department issues a "registration certificate."<sup>3</sup> Samantha Inc. (Samantha) applied to the Department, but was denied a registration certificate.

Samantha petitioned for judicial review of the Department's decision, and relied on the APA, under which Samantha argued it allowed for judicial review of contested final decisions.<sup>4</sup> The Department moved to dismiss because it argued that the marijuana dispensary application process does not qualify as a contested case under the APA. The district court denied the Department's motion and upon review found that the Department's evaluation of Samantha's application was "arbitrary and capricious."<sup>5</sup> The district court then granted judicial review and directed the Department to reevaluate Samantha's application using different criteria than it had used for other applicants. If Samantha's new ranking put it in the top twelve applicants, then the Department was ordered to issue Samantha a registration certificate. The Department appealed.

**Discussion**

A.

Samantha challenged the Department's decision by petitioning for judicial review under the APA. A party may seek judicial review, if available by statute, to challenge an administrative agency's decision.<sup>6</sup> The jurisdiction's Administrative Procedure Act and the agency-specific

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<sup>1</sup> By Sara Schreiber.

<sup>2</sup> NEV. REV. STAT. § 233B.

<sup>3</sup> NEV. REV. STAT. § 453A.322.

<sup>4</sup> NEV. REV. STAT. § 233B.130.

<sup>5</sup> *Dep't of Health & Human Serv.'s v. Samantha Inc.*, 133 Nev. Adv. Op. 100, 4 (Dec. 14, 2017).

<sup>6</sup> *Crane v. Cont'l Tel. Co.*, 775 P.2d 705, 706 (1989).

statutes determine the applicable legal remedies.<sup>7</sup> Equitable remedies are available at the court's discretion and only when legal remedies are unavailable or inadequate.<sup>8</sup>

B.

The Department argued that the district court did not have the authority to consider Samantha's petition for judicial review because the dispute was not the result of a contested case. Samantha responded that judicial review of the Department's decision was appropriate because it was recognized as a party of record by the Department agency and was aggrieved by its final decision, resulting in a contested case.<sup>9</sup> The question, then, is whether the application process to receive a registration certificate qualifies as a contested case.

A party of record in an administrative hearing is afforded the right of judicial review when the party is "[a]ggrieved by a final decision in a contested case."<sup>10</sup> A contested case is a, "proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed."<sup>11</sup> Therefore, in order to qualify for judicial review, a contested case must be the result of a final agency decision from a proceeding which required an opportunity for a hearing or imposed an administrative penalty.

C.

The Department argued that the application process to receive a registration certificate does not qualify as a contested case because it does not require notice and an opportunity for a hearing. However, Samantha argued that the Legislature intended to provide judicial review for medical marijuana establishment registration certificates as evidenced by the statutory text granting judicial review for provisions regarding applications for medical marijuana identification cards.<sup>12</sup>

However, Samantha's reliance on this statute is incorrect. The statutory and regulatory provisions governing medical marijuana establishments do not support the assertion that there should be a hearing following the Department's decisions in evaluating registration certificate applicants. Rather, judicial review is only available under two circumstances: (1) when a petition to the Department to add a disease or condition that qualifies for medical marijuana treatment is denied; and (2) when an application for an individual medical marijuana identification card is denied.<sup>13</sup> Since Samantha's case does not fall under either of these two exceptions, it cannot petition the court for judicial review.

## **Conclusion**

Though the APA does not provide judicial review of uncontested cases, this does not preclude applicants that do not receive a medical marijuana registration certificate from seeking

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<sup>7</sup> *Id.*

<sup>8</sup> RICHARD J. PIERCE JR., ADMINISTRATIVE LAW TREATISE, 1701 (5th ed. 2010).

<sup>9</sup> NEV. REV. STAT. § 233B.130.

<sup>10</sup> NEV. REV. STAT. § 233B.130(1)(a).

<sup>11</sup> NEV. REV. STAT. § 233B.032.

<sup>12</sup> NEV. REV. STAT. § 453A.210(6).

<sup>13</sup> NEV. REV. STAT. §§ 453A.710; 453A.210(6).

judicial relief through other means. Because Samantha proceeded exclusively under the APA, it was not entitled to review. Additionally, Samantha did not plead or establish any other form of equitable relief. The Court vacated the judgment of the district court and remanded the matter with instructions to grant the Department's motion to dismiss.