

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN  
AND FOR SUMTER COUNTY, FLORIDA**

**MK3 PLUS SOFTWARE, LLC,**

**Plaintiff,**

**vs.**

**CASE NO.: 2022-CA-546**

**SUMTER COUNTY,**

**Defendant.**

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**ORDER ON DEFENDANT'S MOTION TO DISMISS**

**THIS COURT** having considered Defendant's Motion to Dismiss, filed on December 5, 2022; Plaintiff's Response to Motion to Dismiss Plaintiff's Complaint, filed on January 10, 2023; and having reviewed the records of this case, finds as follows:

1. Plaintiff's Complaint, filed on October 26, 2022, asserts a claim for declaratory judgment declaring that it is entitled to the issuance of an operating permit as an existing operator of an internet café. Plaintiff appears to assert it did not receive notice of the Board of County Commissioners ("BCC")'s hearing on May 10, 2022 and at such hearing the BCC did not make a determination as to whether the application for the operating permit was denied but was merely "on hold". Plaintiff asserts the May 25, 2022 letter from the Sumter County attorney to Plaintiff improperly relied on a denial of the operating permit at the May 10, 2022 meeting and improperly denied the operating permit.

2. Defendant asserts Plaintiff's Complaint should be dismissed for failure to file a timely appeal of its determination with respect to the non-issuance of the operating permit on May 10, 2022.

3. Plaintiff asserts Defendant's motion to legally insufficient.

4. Florida law is well-settled that the trial court's standard of review regarding a motion to dismiss is as follows:

The purpose of a motion to dismiss is to request the trial court to determine whether the

complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal. The trial court must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept as true all well-pleaded allegations. It is not for the court to speculate whether the allegations are true or whether the pleader has the ability to prove them. The question for the trial court to decide is simply whether, assuming all the allegations in the complaint to be true, the plaintiff would be entitled to the relief requested.

Huet v. Mike Shad Ford, Inc., 915 So.2d 723, 725 (Fla. 5th DCA 2005)

Thus, this Court must confine its gaze to the four corners of the Complaint, “accept as true” the Plaintiff’s allegations, and determine whether the Plaintiff has properly alleged a valid cause of action against the Defendant.

5. Section 120.68(2)(a), Florida Statutes provides

Judicial review shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law. All proceedings shall be instituted by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days after the rendition of the order being appealed. If the appeal is of an order rendered in a proceeding initiated under [s. 120.56](#), the agency whose rule is being challenged shall transmit a copy of the notice of appeal to the committee.

6. Plaintiff is making multiple claims regarding the non-issuance of the operating license, including lack of notice; Sumter County Board of County Commissioners’ improperly placing Plaintiff’s application “on hold” on May 10, 2022; and the Sumter County attorney’s letter claiming denial of the application on May 25, 2022. As noted above, a party who is adversely affected by final agency action is entitled to judicial review. Such judicial review, however, must be instituted by 30 days after the rendition of the order being appealed. Plaintiff, in this case, is seeking review of an agency action. Consequently, Plaintiff’s Complaint is untimely.

Based upon the foregoing, it is hereby;

**ORDERED AND ADJUDGED:**

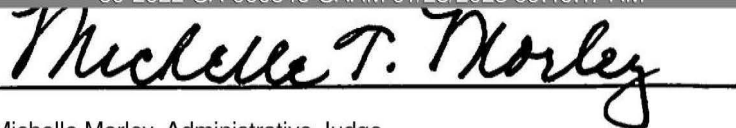
1. Defendant’s Motion to Dismiss is **GRANTED**.

2. Plaintiff's Complaint is hereby **DISMISSED**.

3. Plaintiff, if it should so choose, has 20 days from the date of this order to file an Amended Complaint.

4. In the event Plaintiff fails to file an Amended Complaint within the time allowed or the Amended Complaint fails to assert a cause of action, the Amended Complaint may be **dismissed with prejudice**.

**DONE AND ORDERED** in Chambers, at Bushnell, Sumter County, Florida, on Wednesday, January 25, 2023

60-2022-CA-000546-CAAM 01/25/2023 09:46:17 AM  
  
Michelle Morley, Administrative Judge  
60-2022-CA-000546-CAAM 01/25/2023 09:46:17 AM

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been furnished to the following by electronic service through the Florida Court's e-filing portal on this \_\_\_\_ day of Wednesday, January 25, 2023

Kelly B. Mathis  
kmathis@mathislaw.net  
samantha@mathislaw.net

SUMTER COUNTY  
7375 POWELL ROAD  
WILDWOOD, FL 34758

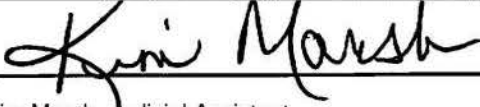
callen@mathislaw.net

Jennifer C Rey

jrey@hoganlawfirm.com

pleadings@hoganlawfirm.com

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Kim Marsh, Judicial Assistant  
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