

DELAWARE MARIJUANA APPEALS COMMISSION

In Re: )  
 ) OMC App. No. 2024-001632 &  
MATTER OF SEPIA KOALA LLC, ) OMC App. No. 2024-001633  
 )  
Appellant. )

Submitted: March 24, 2026

Decided: April 22, 2026

Peter Murphy, Esquire, Counsel  
to Appellant Sepia Koala LLC

Erica Sefton, Deputy Attorney General,  
Counsel to the Office of Marijuana Commissioner

**DECISION AND ORDER**

Sepia Koala LLC and its principal Jacqueline Maier-Lacy (together, “SK”) were selected in a lottery run by the Office of Marijuana Commissioner (“OMC”) for cultivation and retail social equity establishment licenses (the “Licenses”). Following submission of supplemental materials, OMC denied the Licenses to SK, and SK timely appealed that denial. This is the decision of the Marijuana Appeals Commission. For the reasons set forth below, the Commission affirms the denial of SK’s social equity Licenses. For the reasons explained below, the Commission is not unsympathetic to SK. However, our review is limited to an abuse of discretion standard and the Commission finds that the Commissioner did not abuse his discretion.

**BACKGROUND**

According to OMC, SK submitted four initial applications for an OMC-run lottery. A consultant, later identified as Quantum Crest LLC (the “Consultant”), assisted SK in submitting the applications and paid its application fees. SK was selected in the lottery for cultivation and retail social equity licenses (the Licenses). Following SK’s selection, OMC requested and received various agreements between the Consultant and SK, including a Consulting Agreement and an Option Agreement.

On December 1, 2025, OMC notified SK that the Licenses were being denied. The denial was based upon OMC’s conclusion that the arrangement with the Consultant was predatory and not in the public interest. OMC explained that social equity licenses represent the General Assembly’s goal of supporting individuals negatively impacted by historic marijuana legislation and policies. OMC found that the relationship between SK and the Consultant, as demonstrated by the Consulting and Option Agreements, thwarted the public’s interest in issuing social equity licenses. OMC determined that the

“economics of the agreements” failed to “reflect a realistic evaluation of the probable revenue to be generated under these licenses, and the fees accruing to the consultant are unreasonably excessive.” OMC found that the consulting documents made it “inevitable” that the social equity licensee would become indebted to the Consultant to the extent that it would take ownership of the Licenses. This would be contrary to Delaware law, which prohibits any individual or entity from holding more than a 10% interest in a licensed entity without OMC approval. OMC also pointed out that agreements disclosed nothing about the nature of the Consultant, including the fact that the submitted agreements were not countersigned (and therefore failed to disclose the identity of any particular individual working with SK). In this regard, OMC noted that this failure of candor was further reason to be concerned about the public interest in granting the Licenses. Finally, OMC pointed to several provisions in Chapter 13 of Title 4 prohibiting the transfer of social equity licenses to those not meeting the criteria of a social equity licensee.

SK’s memorandum submitted on appeal, entitled a “Request for Regulatory Cure,”<sup>1</sup> in essence, did not dispute OMC’s finding that the apparent contractual obligations SK has with the Consultant made issuing SK the Licenses not in the public interest. Indeed, SK acknowledged OMC’s concern that the agreements between SK and the Consultant created a structure that was incompatible with the purposes of the Social Equity Program and with the regulatory framework governing ownership and control of licensed marijuana businesses.” Accordingly, SK continued that she was electing to proceed “independently and without any continuing relationship with Quantum Crest ... in connection with the license applications or any appeal.” SK’s submission asserted that the regulatory conditions in the contract documents have not been satisfied and noted that any change in ownership would require OMC approval. SK stated that it does not contest OMC’s determination that SK’s application was “encumbered by a predatory consulting and ownership structure that would have resulted in undisclosed or disqualifying control.” SK asked however, “where the factual predicate for that finding has been removed,” that the MAC remand to OMC for “re-evaluation of her applications based on her present ownership, control, and financial interests, free of the previously identified predatory structure.”

## **Discussion**

On April 27, 2023, the Delaware Marijuana Control Act, 4 *Del. C.* Chapter 13 (the “Act”), was signed into law. The Act provides, along with its implementing regulations, a comprehensive scheme for licensing the retail sale, cultivation, testing, and product manufacturing of marijuana in Delaware. *See 4 Del. Admin. § 5001* Rules of the Office of the Marijuana Commissioner (“OMC Regulations”). As described in the OMC submission, OMC was authorized to issue up to 125 marijuana establishment licenses. Likely due to the volume of expected interest, OMC determined that it would utilize a lottery as part of its licensing program.

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<sup>1</sup> This appeal was originally attempted by an attorney for the Consultant. It was scheduled and heard, but only after OMC subsequently obtained clarification that Ms. Maier-Lacy was going to proceed with the appeal with the assistance of separate counsel that she retained.

To enter the lottery, applicants were required to undergo a pre-application screening. Accordingly, applicants submitted an initial application to ensure they first met certain basic requirements for licensure. According to OMC, it received 1,269 license applicants. Those meeting the preliminary requirements were then placed into the lottery. The lottery took place on two days, on October 24 and December 19, 2024. Selected applicants were then required to submit supplemental applications that included, among other things, criminal background checks. OMC provided materials to applicants to guide them through this process. The background checks were done on applicants and their employees and anyone holding an ownership interest of at least 10% in an applicant-entity. *See 4 Del. C. § 1347(a).*

Following a delay in getting the necessary FBI approval for background checks, background investigations were performed on behalf of OMC by the Division of Alcohol and Tobacco Enforcement (“DATE”). DATE conducted comprehensive financial and background investigations of applicants and made recommendations to OMC for each.

OMC is required to issue a certain amount of social equity licenses. Social equity applicants must meet certain statutory criteria. An applicant with at least a majority ownership and control must have either resided in a “disproportionally-impacted area” for a set period of time or must have been convicted or adjudicated delinquent of a marijuana-related offense (with certain exceptions). *4 Del. C. § 1336.* According to OMC, all social equity licenses were drawn during the October 24, 2024, lottery. During DATE’s investigations, it learned that that numerous social equity applicants were not actively involved in the application process and that some applicants allowed their consultants to pay their non-refundable application fees and to use their names to secure licenses. DATE also obtained a copy of a contract package executed by one of the applicants. Other applicants indicated they had similar arrangements but declined to provide copies of their agreements before discussing it with their consultants.

DATE referred the matter to the Delaware Department of Justice, Fraud & Consumer Protection Division (“CPU”). OMC continued to investigate how many social equity applicants were associated with consultants. It requested copies of any operating or other agreements that the applicants may have with consultants. It later determined that 19 applicants were associated with the same consulting group, though each agreement identified a different consultant LLC. OMC viewed the lack of disclosures regarding the identity of the consultants and their representatives as an attempt to shield them from OMC oversight.

Specifically with SK, the Consulting Agreement requires the payment of “Service Costs” and a monthly Service Fee of \$10,000 to be paid between the issuance of a conditional license and when the license becomes active (when SK would become operational), at which time the monthly Service Fee increases to \$50,000 and later to \$75,000. OMC noted that SK could accrue as much as \$180,000 in consulting fees before its business becomes operational. OMC noted further that, assuming the Consulting Agreement remained in place for the three years that the social equity licensee was required to maintain majority ownership, the Service Fees accruing to SK would

amount to another \$300,000 (plus costs) for the first 6 months, and \$2,250,000 (plus costs) for the remaining 30 months and that, in short, SK would be required to pay between \$2.55M and \$2.73M (or more), plus its own costs, for the preoperational period and the first three years of business. These fees paled in comparison to how much it would cost the Consultant, pursuant to option agreements, to acquire a majority stake in the company (between \$3,320 and \$84,660). OMC therefore determined that the agreements worked together to create an economic reality that SK would become so indebted to the Consultant that it will have no choice but to allow the Consultant to exercise its options and eventually push the social equity licensee out of the program for a fraction of the market value of the license. This, according to OMC, is contrary to the public interest since the program was specifically intended to provide true social equity applicants with the opportunity and support to build a business of their own. OMC asserted that one of its principal powers is to issue and deny licenses and that the denial of a conditional license here was the only mechanism available to it to control the impact that the consulting agreements would have on the social equity licenses and the larger regulated adult-use program OMC administers. According to OMC, its power to approve or deny ownership changes “would come into play too late to mitigate the negative impacts of these agreements on social equity licensees and on the adult-use regulatory program as a whole.”

On March 24, 2026, and after due notice being provided to the parties, the Commission held a hearing to hear argument on SK’s appeal. While the argument was not an evidentiary hearing, as its consideration was statutory limited to the record,<sup>2</sup> the Commission heard argument from both parties and received information, including documents submitted to the Commission, that was largely not disputed.

During the hearing, SK argued that it wanted nothing to do with the Consultant going forward. SK noted that it has not been in communication with the Consultant and therefore does not have any position from it regarding whether the agreements with it are “operative.” SK appeared to take the position that Consulting Agreement was subject to approval of OMC. However, the Consulting Agreement by its terms “commences on the date that [SK] is issued a Conditional License, or upon the date that this Agreement receives approval from the OMC, if required.” OMC took the position that there is no clear statutory authority for it to approve (or not approve) consulting arrangements like the one between SK and the Consultant. Regardless, the plain terms of the agreement, attached to SK’s appeal memorandum, provides that it becomes operative upon issuance of a Conditional License *or* OMC approve. And importantly, the agreement may be terminated (against the consent of the Consultant or bankruptcy) by SK paying a \$1M breakup fee. Without a termination, the Consulting Agreement is subject to significant fees that are triggered by OMC issuing a license.

The Commission may reverse OMC’s decision to deny a license only for an abuse of discretion. Discretion is not abused unless it can be shown that “all bounds of reason in view of the circumstances” were exceeded or where “recognized rules of law or practice”

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<sup>2</sup> See 4 Del. C. § 1322(b) (“The Appeals Commission shall: hear the appeal and shall review the matter on the record....”).

were “ignored” to “produce injustice.” *Harper v. State*, 970 A.2d 199, 201 (Del. 2009) (cleaned up). Given the totality of the mostly undisputed facts and circumstances presented in the parties’ submissions and during the hearing before the Commission, it cannot be said that OMC abused its discretion in denying SK’s Licenses.

Again, it is OMC’s position that it does not have the statutory power to approve, deny or modify the consulting agreement and related documents that SK has executed. Also, to the extent OMC could even condition the issuance of the Licenses on SK terminating all ties to the Consultant—a legal position that is not clear—doing so likely creates too much uncertainty regarding the viability of SK’s operations with the cloud of any legal ramifications that may result from such a conditional license. But more to the point, the Commission’s review is a limited one—the Commission is not to substitute its judgment for that of OMC. The only issue is whether OMC *abused its* discretion in determining that the uncertainties surrounding the contractual relationship of SK and the Consultant risk not furthering the public interest. *See 4 Del. C. § 1354(b)(5)* (requiring that licenses further the public interest). It cannot be said, based on this standard, that OMC’s concern about issuing social equity licenses based on this record fails to meet that purpose and the intent of the General Assembly in requiring the issuance of social equity licenses.

Notwithstanding the above, the Commission is not unsympathetic to the plight of SK and its principal. OMC agrees that, if it were not for the implications triggered by granting the license coupled with the consulting agreement and related documents, SK would be granted a conditional license. The Commission hopes that SK and OMC can explore other mechanisms and avenues that might become available that would allow SK to resubmit her social equity applications untethered to any predatory consulting arrangement that is present in this record.

**So ordered, this 22nd day of April, 2026, that the December 1, 2025 decision of the Office of the Marijuana Commissioner to deny the applications of Sepia Koala LLC for the above-referenced social equity license is hereby AFFIRMED.**

/s/ Michael Houghton  
Michael Houghton, Chair

/s/ William L. Chapman  
William L. Chapman, Jr., Member

/s/ Rita Mishoe Paige  
Rev. Rita Mishoe Paige, Member