# IN THE COURT OF COMMON PLEAS
# MEDINA COUNTY, OHIO



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| DALE WESLEY LIND,<br><br>Appellant,<br><br>vs.<br><br>OHIO DEPARTMENT OF AGRICULTURE,<br><br>Appellee. | ) | CASE NO.: 12CIV0809<br><br>JUDGE COLLIER<br><br>**JOURNAL ENTRY** |

This matter came before the Court for oral hearing on August 30, 2012 on the Appellee's motion to dismiss for lack of subject matter jurisdiction and the Appellant's brief in opposition thereto. Counsel appeared on behalf of all parties of record. Upon consideration of the Appellee's motion, the Appellant's brief in opposition and the arguments of counsel, and for the reasons more specifically set forth below, the Appellee's motion to dismiss for lack of subject matter jurisdiction is hereby GRANTED.

On May 25, 2012, the Appellant Dale Wesley Lind filed an appeal from the Appellee Ohio Department of Agriculture's decision dated May 10, 2012, wherein the Appellant's application for a Small Dealer's License was denied. On June 12, 2012, the Appellee filed the aforementioned motion to dismiss for lack of subject matter jurisdiction. The Appellee argues that the Appellant failed to exhaust his administrative remedies, which deprives this Court of subject matter jurisdiction. The Appellant responded in opposition that the May 10, 2012 decision includes the notice of the right to appeal, and therefore the Appellee "invited and subjected itself to an appeal in the court of common pleas pursuant to its own request."

The Court finds that it is necessary to examine the administrative history of this matter. Attached as Exhibit A to the Appellee's motion to dismiss is a March 12, 2012 letter advising the

Appellant that the "Animal Health Division is proposing to deny your request for a small dealer's license." The letter goes on to state that "pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action." The letter advises the Appellant of the process for requesting and obtaining a formal hearing on the matter. Finally, the letter states that "if you fail to request a hearing within 30 days of the mailing of this letter, the department will consider it a waiver of your right to an administrative hearing and will proceed to deny your request for a small dealer's license."

When the Appellant failed to request a formal hearing, the Appellee issued a decision dated May 10, 2012 denying the Appellant's request for a small dealer's license. Attached to the May 10, 2012 decision is a "Notice" which sets forth the Appellant's right to appeal the decision pursuant to R.C. 119.12. The Appellant claims that this "Notice" invited the Appellant to appeal and the agency subjected itself to this appeal pursuant to its own request. This Court does not agree.

The Appellee did attach R.C. 119.12 notice language to the May 10, 2012 decision. However, this Court's jurisdiction to entertain administrative appeals is statutory, and the Appellee cannot somehow confer subject matter jurisdiction on the Court in this instance. Further, the Appellee undoubtedly attaches this "Notice" to all of its decisions, as it is the role of this Court, not the Appellee, to decide whether or not the Court has jurisdiction to entertain the Appellant's appeal.

The exhaustion of administrative remedies doctrine is well-established in Ohio law. *State ex rel. Max Rothal v. Smith*, 151 Ohio App.3d 289, 314, 2002-Ohio-7328, 783 N.E.2d 1001 (9th Dist.), citing *Noernberg v. Brook Park*, 63 Ohio St.2d 26, 29, 406 N.E.2d 1095 (1980). The doctrine makes it clear that a party must exhaust his or her administrative remedies prior to

appealing to the common pleas court in an administrative matter. *Id.* The purpose of this requirement is to promote judicial economy in the courts and to prevent "premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Id.*, citing *Weinberger v. Salfi*, 422 U.S. 749, 765, 95 S.Ct. 2457; 45 L.Ed.2d 522 (1975).

Two exceptions to the exhaustion of administrative remedies doctrine exist. *Waliga v. Coventry Township*, 9th Dist. No. 22015, 2004-Ohio-5683, ¶12. First, "exhaustion is not required if the administrative remedy cannot provide the relief desired or if resort to the remedy would be totally futile." *Id.*, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12; 526 N.E.2d 1350 (1988). Second, "exhaustion is not required if the remedy is onerous or unusually expensive." *Id.*

The Appellant does not contend that the March 12, 2012 letter was not delivered to or received by the Appellant. The Appellant further does not challenge the fact that the Appellant never requested a formal administrative hearing within 30 days of the March 12, 2012 letter. The Court finds that the Appellant failed to exhaust his administrative remedies by failing to request a formal hearing within 30 days of the March 12, 2012 letter. Under existing Ohio law and the exhaustion of administrative remedies doctrine, the Appellant was required to exhaust his administrative remedies prior to seeking an appeal in this Court. Neither of the exceptions to the doctrine apply in this case.

Accordingly, the Appellee's motion to dismiss for lack of subject matter jurisdiction is hereby GRANTED. The Court does not have subject matter jurisdiction to entertain the

Appellant's administrative appeal. The Appellant's appeal is hereby dismissed with prejudice.

Costs are assessed to the Appellant.

IT IS SO ORDERED.

CHRISTOPHER J. COLLIER
JUDGE

Copies to:

Atty. Jones
Atty. Patterson

"FINAL APPEALABLE ORDER"