

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

FIRST FRUITS CHILD CARE
CENTER, LLC, et. al.,

:

Appellants,

:

CASE NO. 12 CV 185

vs.

:

JUDGE BROWN

OHIO DEPARTMENT OF EDUCATION

:

Appellee.

:

Decision and Entry

Rendered this 21st day of February, 2013

This matter is before the Court on the Motion to Dismiss filed by Appellee Ohio Department of Education on January 27, 2012. Appellants filed a Response on February 29, 2012, and Appellee filed its Reply on March 9, 2012. The issues are now ripe for determination.

STATEMENT OF FACTS

This matter is before the Court as the result of an administrative appeal filed by Respondents First Fruits Child Care Center, LLC (“First Fruits”), Chelsea Pernell, Andrew Pernell, Gloria Croom, and Monique Stewart (collectively, “Appellants”). Appellants purport to appeal a decision by an independent administrative review official (the “Hearing Officer”) affirming the determination of the Ohio Department of Education (“ODE”) to terminate First Fruits’ participation from the Child and Adult Care Food Program (“CACFP”) and to disqualify First Fruits, as well as Mr. and Ms. Pernell, Ms. Croom, and Ms. Stewart, from future participation in CACFP.

CACFP is a federal program under the United States Department of Agriculture. It is a reimbursement program for sponsoring organizations providing nutritious meals for eligible children, following federal regulations set forth in 7 C.F.R. Part 226. ODE, Office for

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Child Nutrition, is the state agency responsible for monitoring and funding organizations that sponsor CACFP in Ohio.

ODE's review of operations at First Fruits in 2010 revealed areas in which First Fruits had not complied with the federal regulations, including by failing to comply with bid procedures and contract requirements of federal procurement regulations and by submitting false information on its application. (Administrative Review Decision of Hearing Officer, attached as Exhibit A to Notice of Appeal, at 3-4.)

On August 30, 2010, ODE issued a letter to Appellants identifying deficiencies in their operation of CACFP, the steps they needed to take in order to correct the deficiencies, and the deadline for making the identified corrections. The notice further informed Appellants that unless the deficiencies were fully and permanently corrected, ODE would propose to terminate First Fruits' participation in CACFP and to disqualify First Fruits as well as Chelsea Pernel, Andrew Pernel, Gloria Croom, and Monique Stewart from future CACFP participation. First Fruits submitted corrective action documentation, but ODE determined that the corrective action failed to fully and permanently correct the identified serious deficiencies. ODE proposed to terminate First Fruits and its principals from CACFP participation. Rather than proceed to administrative review, First Fruits offered to repay to ODE \$136,080.23, which represented the total amount of meals for which First Fruits was reimbursed while it did not have a valid vendor contract in place. (*Id.* at 4.)

By mid-2011, it was apparent that First Fruits could not meet its obligations under the settlement agreement. In August 2011, First Fruits informed ODE that the IRS had a levy on its accounts and the owners had filed for bankruptcy protection. In consultation with the USDA, ODE determined that First Fruits could no longer meet its financial obligations and was not fiscally sound to operate a CACFP site. (*Id.* at 5.)

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After consulting with USDA, ODE reissued a letter proposing to terminate and disqualify First Fruits and its principals in September 2011. First Fruits responded that it had not received the administrative review procedures ODE normally encloses. ODE reissued the proposed termination and proposed disqualification letter with the administrative review procedures. Andrew Pernell, seemingly on behalf of First Fruits and its principals, requested an in-person hearing. (*Id.*)

The hearing was held on October 27, 2011 pursuant to 7 C.F.R. Part 226. (*Id.*) Both ODE and Appellants presented witnesses and several exhibits. (*Id.* at 1.) Following the hearing, the Hearing Officer issued her decision affirming ODE's proposed termination and proposed disqualification. (*Id.* at 9.) This appeal followed.

LAW AND ANALYSIS

The Tenth District Court of Appeals recently reviewed this very issue and explicitly held that common pleas courts lack subject-matter jurisdiction over appeals from the CACFP and Summer Food Service Program ("SFSP"). In *Mahoning-Youngstown Community Action Partnership ("MYCAP") v. Ohio State Dept. of Edn.*, 10th Dist. Nos. 11AP-582 and 11AP-583, 2011-Ohio-6394, program sponsor MYCAP attempted to appeal two decisions requiring it to reimburse ODE a substantial sum of money. As Appellants have here, MYCAP attempted to appeal the decisions to the Franklin County Court of Common Pleas under Section 119.12 of the Ohio Revised Code. Upon motion by ODE, the trial court dismissed the consolidated appeals for lack of subject-matter jurisdiction. MYCAP then appealed to the Tenth District Court of Appeals.

In its de novo review of the matter, the Tenth District first observed that "[t]he state courts generally do not engraft state procedures of administrative appeals onto a federal program, particularly when the federal program clearly lays out its own procedures for claim disputes and expressly labels its procedures as 'final.'" *Id.* at ¶ 7. The court further

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noted that the federal regulations governing CACFP and SFSP do not provide for appeals through the state courts but instead permit administrative hearings to be conducted by an independent hearing officer. Finally, the court held that Revised Code Chapter 119 does not apply to the child nutrition legislative scheme because the hearings are governed by federal law, and the plain language of the regulations “clearly specified that the determination by the hearing officer is the final administrative determination.” *Id.* The court therefore concluded that the trial court had properly dismissed MYCAP’s appeal because it lacked subject-matter jurisdiction.

In the case at bar, First Fruits has received the same process as afforded MYCAP – notice and a hearing held by an independent hearing officer. The independent hearing officer issued a final decision, affirming ODE’s determination to terminate First Fruits’ participation in CACFP and to disqualify First Fruits and its principals from future participation in the program. The Hearing Officer’s decision in this matter is not subject to further review in the state courts. This Court thus lacks subject-matter jurisdiction over this matter and must dismiss this appeal.

CONCLUSION

Accordingly, as this Court does not have subject matter jurisdiction over the instant appeal, Appellee’s Motion to Dismiss is hereby **GRANTED** and its Motion for Extension of Time is hereby **MOOT**. This action is hereby **DISMISSED**. Costs to Appellants.

IT IS SO ORDERED.

KIM J. BROWN, JUDGE

COPIES TO:
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Franklin County Court of Common Pleas

Date: 02-21-2013

Case Title: FIRST FRUITS CHILD CARE CENTER LLC -VS- OHIO STATE
DEPARTMENT EDUCATION

Case Number: 12CV000185

Type: ENTRY

It Is So Ordered.

A handwritten signature in blue ink is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" around the middle, and "ALL THINGS ARE POSSIBLE" at the bottom. The signature is a stylized, cursive "KRB".

/s/ Judge Kim Brown

Court Disposition

Case Number: 12CV000185

Case Style: FIRST FRUITS CHILD CARE CENTER LLC -VS- OHIO
STATE DEPARTMENT EDUCATION

Case Terminated: 08 - Dismissal with/without prejudice

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0001852012-01-2799980000

Document Title: 01-27-2012-MOTION TO DISMISS

Disposition: MOTION GRANTED