

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1772

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida
and SPRING OAKS
GREENHOUSES, INC.,

Appellees.

No. 1D19-1777

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida
and DEWAR NURSERIES, INC.,

Appellees.

No. 1D19-1778

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
DELEON'S BROMELIADS, INC.,

Appellees.

No. 1D19-1780

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
HART'S PLANT NURSERY, INC.,

Appellees.

No. 1D19-1781

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
PERKINS NURSERY, INC.,

Appellees.

No. 1D19-1782

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
REDLAND NURSERY, INC.,

Appellees.

No. 1D19-1783

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
TREE KING-TREE FARM, INC.,

Appellees.

No. 1D19-1784

LOUIS DEL FAVERO ORCHIDS,
INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF
HEALTH, an executive branch
agency of the State of Florida and
BILL'S NURSERY, INC.,

Appellees.

On appeal from a Final Order of the Department of Health.

February 10, 2020

PER CURIAM.

Louis Del Favero Orchids, Inc. (Del Favero), challenges eight final administrative orders of the Florida Department of Health (DOH). Prior to the entry of the orders, administrative proceedings had commenced with the Division of Administrative Hearings (DOAH) but then were remanded back to DOH due to the entry of an injunction by the circuit court in *Florigrown, LLC v. Florida Department of Health*, Case No. 2017 CA 002549 (Fla. 2d Cir. Ct., Leon Cnty.).¹ Thereafter, DOH and the applicants (the other Appellees here) entered into a joint settlement agreement under which the applicants' administrative actions were voluntarily dismissed by the respective applicants and each applicant was licensed as a Medical Marijuana Treatment Center. See § 381.986(8), Fla. Stat. (2018). We dismiss Del Favero's appeals based on a lack of standing and therefore decline to address the other issues raised by Del Favero.

Standing is a question of law which we review de novo. *South Broward Hosp. Dist. v. State, Agency for Health Care Admin.*, 141 So. 3d 678, 680 (Fla. 1st DCA 2014). Del Favero was not a specifically named entity whose substantial interests were being determined in any of the eight DOH actions or the administrative proceedings before DOAH concerning those actions. See § 120.52(13)(a), Fla. Stat. And while Del Favero alleged its economic interests were affected in general by DOH's orders, Del Favero never made an appearance as a party in any of the eight actions. See § 120.52(13)(b), Fla. Stat. Although Del Favero filed motions to intervene in six of the DOAH appeals, it failed to obtain

¹ This court affirmed the injunction "as modified." *Fla. Dep't of Health v. Florigrown, LLC*, 44 Fla. L. Weekly D1744, 2019 WL 2943329 (Fla. 1st DCA July 9, 2019), review granted, No. SC19-1464, 2019 WL 5208142 (Fla. Oct. 16, 2019).

any rulings on the motions before the appeals were closed and the actions remanded by the administrative law judge. Del Favero was not a party to the joint settlement agreement and had not been denied a license based on any application filed pursuant to section 381.986(8).

Since Del Favero was not a party to the administrative actions, as defined by section 120.52(13) and described in section 120.68(1)(a), Florida Statutes, it does not have standing to bring these appeals. See *FRS-Fast Reliable Seaway, LLC v. Bd. of Pilot Comm'rs*, 261 So. 3d 744 (Fla. 3d DCA 2018) (denying petition for writ of certiorari; even if petitioner was adversely affected by final order resulting from settlement between parties and agency, petitioner did not meet definition of “party” under § 120.52(13)); *Norkunas v. State Bldg. Comm'n*, 982 So. 2d 1227 (Fla. 1st DCA 2008) (dismissing appeal; appellant not a party to administrative agency action and thus lacked standing to appeal final order).

Further, in the administrative actions where Del Favero sought to intervene, Del Favero could not have shown that its substantial interests would be sufficiently affected by the outcome of the administrative appeals. As explained in *South Broward Hospital District*, competitors seeking to intervene must establish that “(1) they would ‘suffer injury in fact which is of sufficient immediacy to entitle [them] to a section 120.57 hearing, and (2) that [their] substantial injury is of a type or nature which the proceeding is designed to protect.’” *South Broward Hosp. Dist.*, 141 So. 3d at 681 (quoting *Agrico Chem. Co. v. Dep't of Envtl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981)). The injury-in-fact prong of this test requires a showing of “actual or immediate threatened injury at the time the petition was filed, and ‘[t]he injury of threat of injury must be both real and immediate, not conjectural or hypothetical.’” *South Broward Hosp. Dist.*, 141 So. 3d at 681 (quoting *Village Park Mobile Home Ass'n, Inc. v. State, Dep't of Business Regulation*, 506 So. 2d 426, 433 (Fla. 1st DCA 1987)) (on motion for rehearing).

No injury-in-fact is demonstrated by Del Favero because there were three potential Medical Marijuana Treatment Center licenses available under section 381.986(8)(a)2. prior to the agency's final orders, and there remain three potential licenses

after the entry of the final orders Del Favero challenges.² The preference to be given to former citrus processors as provided by section 381.986(8)(a)3., that Del Favero planned to claim in a future application, was not eliminated by DOH's final orders. It was undisputed that Del Favero never applied for a license under section 381.986(8) and consequently, no such application by Del Favero had ever been denied.³

Finally, even if Del Favero had been improperly denied intervention, the error would be harmless because an intervenor's rights are subordinate to the rights of the parties. *Environmental Confederation of S.W. Fla., Inc. v. IMC Phosphates, Inc.*, 857 So. 2d 207 (Fla. 1st DCA 2003); *see also* Fla. R. Civ. P. 1.230. An intervenor's status exists "only so long as the litigation continues between the parties" and is "lost altogether if the parties decided to settle the case or voluntarily dismiss it." *Environmental Confederation*, 857 So. 2d at 211. The parties to the eight administrative actions here decided to settle, and the actions were voluntarily dismissed.

Because Del Favero lacks standing to appeal the challenged orders, these appeals are DISMISSED.

MAKAR, BILBREY, and JAY, JJ., concur.

² Del Favero agrees that it does not qualify for one of the three licenses available to "one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011)." § 381.986(8)(a)2.b.

³ While Del Favero never applied for licensure under section 381.986, Florida Statutes, the appellate record indicates that Del Favero sent a letter to DOH in October 2018 requesting registration as a Medical Marijuana Treatment Center pursuant to Article X, Section 29 of the Florida Constitution. DOH declined to issue Del Favero a license in response to this letter. The letter did not establish Del Favero as a competing applicant for licensure in the same posture as the eight previously denied applicants named in the orders challenged in this appeal.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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