

# RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2625-21

NJ GOLDEN HOME CARE, INC.  
AND NORA HOME CARE, LLC,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY OFFICE OF  
THE ATTORNEY GENERAL DIVISION  
OF CONSUMER AFFAIRS, STATE OF  
NEW JERSEY OFFICE OF THE  
ATTORNEY GENERAL DEPARTMENT  
OF LAW AND PUBLIC SAFETY, DIVISION  
OF CRIMINAL JUSTICE OFFICE OF THE  
INSURANCE FRAUD PROSECUTOR,

Defendants-Respondents.

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Submitted October 17, 2023 – Decided October 24, 2023

Before Judges Haas and Puglisi.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Mercer County, Docket No. C-  
000091-21.

Lindabury, McCormick, Estabrook & Cooper, PC, attorneys for appellants (Stephen A. Timoni and Kerry Cahill, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Division of Consumer Affairs (Donna Arons, Assistant Attorney General, of counsel; Roman Guzik, Deputy Attorney General, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Office of the Insurance Fraud Prosecutor (Kevin J. Dronson, Deputy Attorney General, on the statement in lieu of brief).

#### PER CURIAM

Plaintiffs NJ Golden Home Care, Inc. and Nora Home Care, LLC appeal from the Law Division's March 15, 2022 order dismissing their complaint challenging certain actions taken against them by defendant Division of Consumer Affairs (DCA). We affirm.

Plaintiffs are health care service firms that provide home care services to patients as authorized by registrations issued to them by DCA pursuant to N.J.S.A. 34:8-45.1 and N.J.A.C. 13:45B-13. In December 2020, DCA conducted an inspection of plaintiffs' offices and found evidence that plaintiffs were violating DCA's regulations.

On June 30, 2021, DCA issued provisional orders of revocation of plaintiffs' registrations and provisional orders denying their renewal

applications for their current registrations. Each order advised plaintiffs of their right to challenge DCA's proposed actions and the steps they needed to take in order to do so. The orders also stated that an evidentiary hearing would be conducted if there was a need for further proceedings.<sup>1</sup>

Plaintiffs filed written responses to DCA's allegations and DCA determined to conduct the evidentiary hearing itself rather than transmit the matter to the Office of Administrative Law (OAL) for the hearing. See Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 161 (2018) (confirming that an agency head has the exclusive authority to decide contested cases and is not required to transfer the matter to the OAL); see also In re Kallen, 92 N.J. 14, 20 (1983); N.J.S.A. 52:14B-10(c); N.J.S.A. 52:14F-8(b).

DCA served discovery requests upon plaintiffs. The agency also sought to depose plaintiffs' owner, Hatem Abdelaziz.

On December 16, 2021, plaintiffs filed an order to show cause and verified complaint in the Law Division seeking to have that court halt the administrative proceedings. However, black letter law firmly establishes that the Appellate Division, and not the Law Division, has "exclusive jurisdiction to review any

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<sup>1</sup> DCA permitted plaintiffs to continue to operate and has renewed their registrations throughout during the entirety of the ongoing administrative proceedings.

action or inaction of a [S]tate administrative agency" like DCA. Beaver v. Magellan Health Servs., Inc., 433 N.J. Super. 430, 442 (App. Div. 2013) (citing Mutschler v. N.J. Dep't of Env't. Prot., 337 N.J. Super. 1, 8 (App. Div. 2001)). Such jurisdiction does not depend on the theory of the party's claim, nor the nature of the relief sought. Mutschler, 337 N.J. Super. at 9.

If the party is challenging a final decision of the agency, the Law Division, because it lacks subject matter jurisdiction, should transfer the matter to the Appellate Division. R. 1:13-4(a). In a case where, as here, the party is contesting an agency's interlocutory decision or action, the trial court should dismiss the matter because the party must seek leave to appeal the agency action to this court under Rule 2:5-6(a).

A court cannot hear a case to which it lacks subject matter jurisdiction, even if all parties agree and desire an adjudication on the merits. Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 65 (1978) (citing State v. Osborn, 32 N.J. 117, 122 (1960)). Similarly, subject matter jurisdiction cannot be waived by a party's failure to timely object. Lay Fac. Ass'n of Reg'l Secondary Schs. of Archdiocese of Newark v. Roman Cath. Archdiocese of Newark, 122 N.J. Super. 260, 269 (App. Div. 1973).

Dismissal is also required where the party seeking court review has not yet exhausted all of its administrative remedies before the State agency. R. 2:2-3(a)(2); Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 69 (2009). "Exhaustion of administrative remedies before resort to the courts is a firmly embedded judicial principle. . . . This principle requires exhausting available procedures, that is, 'pursuing them to their appropriate conclusion and, correlatively . . . awaiting their final outcome before seeking judicial intervention.'" Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 558-59 (1979) (second alteration in original) (citations omitted) (quoting Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767 (1947)). Even in cases that involve only a question of law, the "'extraordinary course of by-passing the administrative remedies' . . . militate[s] against a sound determination, and therefore quite possibly against the interests of justice." Essex Council No. 1, N.J. Civ. Serv. Ass'n v. Gibson, 118 N.J. Super. 583, 586 (App. Div. 1972) (quoting Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 147 (1962)).

The trial court applied these well-established principles in its review of plaintiffs' request for review of DCA's actions. On January 10, 2022, the court denied plaintiffs' application for temporary restraints that would have dismissed

DCA's June 30, 2021 provisional orders and enjoined the agency from continuing to pursue its disciplinary agency against plaintiffs.

On March 15, 2022, the court dismissed plaintiffs' complaint with prejudice. In its thorough written decision, the court found that it lacked jurisdiction to consider plaintiffs' claims because they were "challenging DCA's actions within the administrative proceeding" and, as a result, "their claims must be lodged with the Appellate Division." The court also ruled that "the doctrine of exhaustion of administrative remedies precludes judicial review until DCA makes a final decision concerning the renewal of" plaintiffs' registrations.

The court rejected plaintiffs' argument that because they were raising constitutional issues in their complaint, such as their allegation that DCA's proceedings did not provide them with due process, "judicial intervention is warranted." Quoting New Jersey Department of Environmental Protection v. Huber, the court found New Jersey courts have held that it is preferable for administrative agencies to pass upon constitutional issues germane to proceedings before them because it "better focus[es] the issues for judicial review, if such action is later necessary." 213 N.J. 338, 373 (2013).

The trial court also found no basis for plaintiffs' demand that the matter be transferred to the OAL. In keeping with the authorities cited above, the court

found that DCA was fully authorized to conduct the hearing itself and was not required to transmit the case to the OAL. This appeal followed.

On appeal, plaintiffs again raise the same arguments they unsuccessfully presented to the trial court. They contend:

POINT 1: THE TRIAL COURT ERRED IN FINDING THAT IT HAD NO JURISDICTION OVER THE DISPUTE IN CONTROVERSY, PARTICULARLY AFTER EXERCISING JURISDICTION OVER THE PARTIES ON THE ISSUE OF TEMPORARY RESTRAINTS, AND ITS DECISION MUST BE REVERSED.

POINT 2: THE TRIAL COURT ERRED IN REFUSING TO STAY THE ADMINISTRATIVE PROCEEDING, IN LIGHT OF IDENTICAL ISSUES OF FACT AND LAW WITH THE PENDING GRAND JURY INVESTIGATION, AND ITS DECISION MUST BE REVERSED.

POINT 3: THE TRIAL COURT ERRED IN FINDING [PLAINTIFFS] HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES AND ITS DECISION MUST BE REVERSED.

POINT 4: THE TRIAL COURT ERRED IN REFUSING TO COMPEL THE DCA TO TRANSFER THE CONTESTED CASE TO THE [OAL] OR SUPERIOR COURT.

After considering these contentions in light of the record and the applicable law, we conclude they are without sufficient merit to warrant extended discussion. See R. 2:11-3(e)(1)(E). We affirm substantially for the

reasons set forth in the trial court's comprehensive written decision. We add the following brief comments.

The question of whether a court has subject matter jurisdiction is subject to our de novo review. AmeriCare Emergency Med. Serv., Inc. v. City of Orange Twp., 463 N.J. Super. 562, 570 (App. Div. 2020). Here, it is abundantly clear that the Law Division did not have jurisdiction to review the actions of a State administrative agency like DCA. In making their arguments to the contrary before this court, plaintiffs ignore all of the Rules of Court, case law, and statutory authority that mandated the trial court's decision to dismiss their complaint for lack of jurisdiction. Because the Law Division lacked jurisdiction to entertain plaintiffs' complaint on its merits, it also had no jurisdiction to grant a stay of the administrative proceedings pending before DCA.

Plaintiffs argue that they should not have to exhaust their administrative remedies before DCA because they believe that matter would be better handled in the OAL. However, DCA had the authority to conduct the hearing itself and, therefore, it was not obligated to transmit it to the OAL.


In addition, after this case was scheduled for disposition, we contacted the attorneys for both parties to ascertain the current status of the administrative proceedings. At that time, both parties confirmed that DCA transferred the



matter to OAL for further handling in July 2023.<sup>2</sup> Therefore, plaintiffs' contentions in Points Three and Four of its brief not only lack merit, they are entirely moot. See DeVesa v. Dorsey, 134 N.J. 420, 428 (1993) (Pollack, J., concurring) (stating that "our courts normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot.").

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION

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<sup>2</sup> The parties also confirmed that the plaintiffs' registrations have remained in full force and effect during the pendency of these proceedings.