

# The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

ALIERA HEALTHCARE, INC.  
d/b/a/ ALIERA COMPANIES, INC.  
and TRINITY HEALTHSHARE, INC.

v.

NEW HAMPSHIRE INSURANCE DEPARTMENT  
and CHRISTOPHER NICOLOPOULOS, COMMISSIONER OF INSURANCE

Docket No.: 217-2020-CV-00162

## ORDER

The Plaintiffs, Alieria Healthcare, Inc. d/b/a Alieria Companies, Inc. (“Alieria”) and Trinity HealthShare Inc. (“Trinity”), seek preliminary and permanent injunctive relief, declaratory judgment, statutory relief, and attorney’s fees against the New Hampshire Insurance Department (the “Department”) on the grounds that the Department, through pending enforcement actions against Alieria and Trinity, has exceeded its jurisdiction and has violated the Religion Clauses of the New Hampshire Constitution. The Defendants, the Department and its Commissioner, Christopher Nicolopoulos, move to dismiss. The Plaintiffs object. For the following reasons, the Defendants’ Motion to Dismiss is DENIED.

### **I. Standard**

In reviewing a motion to dismiss, the Court assumes the truth of all well-pleaded facts of the nonmoving party and construes “all reasonable inferences in the light most favorable” to the nonmoving party. Beane v. Dana S. Beane & Co., 160 N.H. 708, 711 (2010). The Court must then determine, as a threshold matter, whether the facts

alleged by the nonmoving party “constitute a basis for legal relief” when tested “against the applicable law.” Grand Summit Hotel Condo. Unit Owners' Ass'n v. L.B.O. Holding, Inc., 171 N.H. 343, 345 (2018). The Court does not, however, “assume the truth of statements. . . that are merely conclusions of law.” Clark v. N.H. Dep't of Employment Security, 171 N.H. 639, 645 (2019). The Court may additionally consider documents attached to the nonmoving party's pleadings, documents the authenticity of which is not disputed, official public records, or documents sufficiently referred to in the Complaint. Ojo v. Lorenzo, 164 N.H. 717, 721 (2013).

## **I. Background**

Aliera is a foreign, for-profit corporation based in Georgia and licensed to sell life, accident, and health insurance products in New Hampshire as an insurance producer. (Aliera's Compl., Ex. 1 ¶¶ 2–3.) Aliera provides management and other services for health care sharing ministries (“HCSMs”), religiously affiliated nonprofit organizations composed of individuals who share medical expenses in accordance with a “common set of ethical or religious beliefs.” See RSA 126-V:1, II (Id. ¶¶ 1, 23.) Although Aliera is licensed as an insurance producer, it is not licensed as a New Hampshire insurance company. (Id., Ex. 1 ¶ 3.)

Trinity is a nonprofit corporation that describes itself as an HCSM. (Trinity's Compl. ¶ 11.) Aliera and its principals created Trinity on June 27, 2018, and thereafter entered into an Agreement with Trinity, whereby Aliera is responsible for the development, pricing, and marketing of Trinity's HCSM plans. (Aliera Compl., Ex. 1 ¶¶ 6, 9.) Under the Agreement, Aliera is also responsible for vendor recruitment, accounting, and the maintenance of a national sales force. (Id., Ex. 1 ¶ 9.) Aliera is

only one of a number of Trinity's vendors, serving as its "program manager." (Id. ¶¶ 23–24.)

Trinity's members may only join the organization after signing a "Statement of Beliefs" grounded in Christian doctrine. (Trinity's Compl. ¶ 14.) To join, prospective members must declare a shared belief that their personal rights and liberties originate from God and that it is their spiritual duty to God and ethical duty to others to maintain a healthy lifestyle, abstaining from foods, behaviors, or habits that produce sickness or disease in themselves or others. (Id. ¶ 14.) They also agree to send monthly contributions to Trinity, to support other members who need healthcare services and to pool their medical expenses. (Id. ¶¶ 16–17.) Trinity is contractually affiliated with Faith Driven Life Church, which has continuously upheld a tradition of sharing members' medical expenses since 1997. (Id. ¶ 18.) Trinity does not contract with its members, however, to guarantee the payment of any medical expenses in exchange for member contributions. (Alier's Compl. ¶ 19.)

On October 30, 2019, Commissioner Nicolopoulos issued a cease and desist order to both Alier and Trinity asserting regulatory authority over both corporations. (Id., Ex. 1 ¶¶ 24–31.) The order alleges that Alier and Trinity are engaged in the unlicensed business of insurance and have misled New Hampshire consumers by offering, marketing, and administering health coverage that does not meet state or federal requirements. (Id.) It orders Alier and Trinity to cease and desist from writing or renewing any new coverage for New Hampshire insurance consumers. (Id., Ex. 1 ¶ 32.)

On March 10, 2020, the Commissioner issued the Plaintiffs an order to show

cause and a notice of hearing. (Trinity's Mot. Join Alier's Req. for Prelim. Inj. ¶ 2.) Trinity's order to show cause asserts that Trinity does not qualify as a protected HCSM, in part because it has not facilitated the sharing of medical expenses of participants without interruption since December 31, 1999. (Trinity's Compl. ¶ 22.) It also asserts that Trinity has "fail[ed] to establish that it is faith based and limits its membership to individuals who share a common set of ethical or religious beliefs." (Id. ¶ 23.)

In response, Alier filed a Complaint in this Court on March 20, 2020. (Alier's Compl.) It argued that the Department lacks subject matter jurisdiction and that RSA 126-V:1, II is unconstitutional under the federal and State Constitutions. (Id.) On April 23, 2020, Alier filed a separate pleading before the Department, moving to dismiss the Department's action against it and Trinity on substantially the same grounds articulated in its Complaint before this Court. (Department's May 29, 2020 Order.) On April 30, 2020, Trinity successfully moved to join Alier as a party to the proceeding before the Department. (Id.) Trinity joined Alier's motion to dismiss but requested, in the alternative, that the administrative proceeding be stayed until this Court rules on the jurisdictional issues raised by Alier. (Id.)

On May 5, 2020, the Defendants moved to dismiss the Plaintiffs' action in this Court. (Defs.' Mot. Dismiss.) The following day, while the Department's decision on Alier and Trinity's motions remained pending, Trinity also moved to intervene as plaintiff in this Court, arguing that, as the underlying HCSM, it has a direct interest in this proceeding. (Trinity's Assented-to Mot. Intervene.) The Court granted Trinity's motion to intervene on May 11, 2020. On May 18, 2020, Trinity filed an objection to the

Defendants' motion to dismiss.

On May 29, 2020, the Department issued an order denying Alera and Trinity's motions to dismiss and to stay administrative proceedings. Hearing Officer Michelle Heaton asserted jurisdiction but found that "Alera and Trinity's assertions that [the Department] is engaging in discrimination on the basis of religion are not yet ripe for a ruling." (Department's May 29, 2020 Order.) She relied on the fact that "the Commissioner has not yet made any findings of fact or rulings of law on the issues raised by Alera and Trinity," such that it would be "premature to rule on the issues." (Id. at 3.) The Officer also found that, if the Department's allegations are shown to be true, staying the proceedings "would not be in the public's interest." (Id.) Later that same day, this Court heard oral argument on the Defendants' Motion to Dismiss.

## **II. Analysis**

### **1. Jurisdiction**

The Court first addresses the Defendants' jurisdictional challenge. The Defendants argue that the Court lacks subject matter jurisdiction because "[n]othing about the underlying adjudicative process is fundamentally unfair to Alera" or likely to result in "immediate irreparable harm." (Mot. Dismiss ¶¶ 20–21). In the alternative, the Defendants argue the Court should not exercise jurisdiction over this matter pursuant to the doctrine of primary jurisdiction. (Id. ¶ 22.)

The Court has the authority to fashion equitable relief, including temporary and permanent injunctions, pursuant to RSA chapter 498:1, which provides that "[t]he superior court shall have" jurisdiction over "all [] cases cognizable in a court of equity, except [those over which] the court of probate shall have exclusive jurisdiction." The

decision to issue an injunction, “after consideration of the facts and established principles of equity,” rests within the sound discretion of the Court. Town of Atkinson v. Malborn Realty Trust, 164 N.H. 62, 66 (2012). As a general rule, where a party to an administrative proceeding brings an action in this Court seeking equitable relief and “the issue or issues. . . involve purely questions of law, the matter [need] not be referred to an agency.” Frost v. Comm’r, N.H. Banking Dep’t, 163 N.H. 365, 371 (2012).

Pursuant to the doctrine of primary jurisdiction, the Court may “refrain from exercising its concurrent jurisdiction to decide a question until it has first been decided by the specialized administrative agency that also has jurisdiction to decide it.” Id. The doctrine “is based on the reasonable policies of encouraging the exercise of administrative expertise, preserving agency autonomy and promoting judicial efficiency.” See McNamara v. Hersh, 157 N.H. 72, 74 (2008). In Thompson v. New Hampshire Bd. of Med., 143 N.H. 107, 110 (1998), the New Hampshire Supreme Court noted that the complainant bears “the burden of persuading the [Court] that exceptional circumstances justify a departure from the basic policy of postponing . . . review until after the entry of a final judgment.”

The Defendants rely on Thompson to argue the Court can only assert equitable jurisdiction over an agency proceeding where a proceeding before the Department is “fundamentally unfair.” (Mot. Dismiss ¶ 21 (emphasis added).) Yet Thompson itself does not go so far. The Thompson Court merely notes that “the superior court may . . . intervene prior to entry of final judgment in exceptional circumstances,” including where “a party raises a due process violation that fundamentally impedes the fairness of an underlying proceeding resulting in immediate and irreparable harm to that party.” 143

N.H. at 110 (emphasis added). Subsequent decisions of the New Hampshire Supreme Court on the Court's jurisdiction to issue equitable relief make clear that Thompson does not exclusively limit the Court's equitable jurisdiction to instances where due process violations render a proceeding "fundamentally unfair." See e.g., N.H. Dep't of Env'tl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007) (upholding the grant of an injunction against the Department of Environmental Services without reference to a fundamental fairness standard); see also Frost, 163 N.H. at 372 (where a matter before the Court only "requires statutory analysis, the trial court could properly resolve th[e] legal issue.").

The Court elects to exercise its concurrent subject matter jurisdiction over this matter to consider the Plaintiffs' petition for injunctive relief. Though the issuance of an injunction is an "extraordinary remedy," the Court retains the discretion to award injunctions pursuant to RSA chapter 498:1. Whether it is constitutionally permissible to decline to label Trinity as an official health sharing ministry "involve[s] pure[] questions of law," so the Court need not refer the matter to the Department for further fact finding. Frost, 163 N.H. at 371. Although the Court is mindful of "encouraging the exercise of administrative expertise, preserving agency autonomy, and promoting judicial efficiency," the constitutional and statutory issues brought by the Plaintiffs are legal questions of the kind that may be decided in the first instance by the Courts. McNamara, 157 N.H. at 74; Frost, 163 N.H. at 371. The Court's decision to exercise or refrain from exercising its concurrent jurisdiction over equitable challenges based on pure questions of law "rests in [its own] sound discretion." Frost, 163 N.H. at 371–372. The Court consequently DENIES the Defendants' Motion to Dismiss for lack of jurisdiction.

## 2. Religious Non-Discrimination

The Court now turns to the Defendants' Motion to Dismiss Count II of Alier's Complaint, claiming violations of Part I, Articles 5 and 6 of the State Constitution. "Every individual has the natural and unalienable right to worship God according to the dictates of his own conscience, and reason." N.H. CONST pt. 1, art. 5. Moreover, "[e]very . . . denomination or sect shall be equally under the protection of the law," and the State shall not "subordinat[e]. . . any one sect, denomination or persuasion to another." N.H. CONST pt. 1, art. 6 (emphasis added). In Count II of Alier's Complaint, the Plaintiffs allege, inter alia, that the Department determined the content of Trinity's professed ethical and religious beliefs not to be sufficiently "[I]egitimate" to warrant the Department's recognition of Trinity as an HCSM. (Alier's Compl. ¶¶ 51–54.)

The Court is troubled by the Plaintiffs' allegations concerning how the Department is weighing the content of Trinity's and its members' religious views in assessing Trinity's compliance with RSA chapter 126-V. See Appeal of Trotzer, 143 N.H. 64, 71 (1998) (Part I, Article 5 makes it "unconstitutionally impermissible for the [S]tate to . . . [discriminate] on the basis of [a person's] religious views, however unorthodox they may be."); see also Sanborn v. Sanborn, 123 N.H. 740, 747 (1983) (Part I, Article 6 "has been interpreted as committing the States to a position of 'neutrality' between religions.") At this early stage of the proceedings, the Court must "assume the truth" of all factual allegations in the Plaintiffs' pleadings and does not yet require the Plaintiffs to substantiate their allegations. Beane, 160 N.H. at 711. The Court is not prepared to decide at this point whether the Department acted unconstitutionally, but merely tests the allegations against the applicable law. L.B.O.



Holding, Inc., 171 N.H. at 345. Given that the Department cannot discriminate against the Plaintiffs based on an assessment of the orthodoxy of Trinity's religious beliefs, the Court denies the Defendants' Motion to Dismiss Count II of Alera's Complaint.

**I. Conclusion**

For the foregoing reasons, the Defendants' Motion to Dismiss is DENIED. A further hearing shall be scheduled on the claim for temporary injunctive relief, as the docket allows.

**SO ORDERED.**

Date

7/16/2020

  
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**John C. Kissinger, Jr.**  
**Presiding Justice**

Clerk's Notice of Decision  
Document Sent to Parties  
on 07/10/2020