

THE REAL DEAL

SOUTH FLORIDA REAL ESTATE NEWS

High court: Federal judge sides with Miami landlords in marijuana dispensary fight

City refuses to issue certificates of occupancy for downtown Miami sites owned by real estate moguls Romie Chaudhari and Marc Roberts

Miami

Sep. 27, 2021 06:00 PM

By Francisco Alvarado



Landlords Romie Chaudhari at 90 NE 11th Street, and Marc Roberts at 60 NE 11 Street (Google Maps)

Miami's de facto ban on medical marijuana dispensaries took a big hit. Last week, U.S. District Judge Michael K. Moore ruled federal court has no jurisdiction over where medical marijuana dispensaries are located in the city.

As a result, Moore approved a request by a pair of prominent downtown Miami landowners who oppose the ban to send their April 21 lawsuit against the city back to Miami-Dade Circuit Court. Miami had the complaint moved to federal court a month later.

Separate entities led by the landowners, Marc Roberts

(<https://therealdeal.com/miami/2020/02/25/e11even-owner-marc-roberts-returns-to-miami-worldcenter-with-27m-purchase/>) and Romie Chaudhari, want to open medical marijuana dispensaries at two different locations, but have been unable to do so because the city won't issue certificates of occupancy for the two properties, according to the lawsuit.

Roberts, a Miami-based real estate investor who is a co-developer of the E11even Hotel & Residences Miami (<https://therealdeal.com/miami/2021/04/20/e11even-condo-tower-planned-for-downtown-miami-reaches-90-of-units-under-contract-in-two-months/>) condo project and co-owns E11even nightclub, owns a 6,250-square-foot nightclub space at 60 Northeast 11th Street.

Chaudhari (<https://therealdeal.com/miami/2018/08/14/la-investment-group-drops-16-5m-on-property-next-to-miami-worldcenter/>), a Los Angeles-based real estate investor and owner of the Swansea City English Premier League soccer club, owns the 11,250-square-foot property next door at 90 Northeast 11 Street.

Roberts bought his property for \$800,000 in 2012, records show. Chaudhari, who also heads Chiron Investments, a firm with primary real estate holdings in Boston and Los Angeles, paid \$16.5 million for his warehouse in 2018.

The dispute stems from a Miami City Attorney's Office opinion that the federal Controlled Substances Act, which classifies cannabis as an illegal drug, supersedes a 2016 Florida Constitutional Amendment that legalized marijuana for medical use. Even though more than 70 percent of state voters approved the measure, Miami City Attorney Victoria Mendez has maintained that city officials are precluded from issuing permits for dispensaries because cannabis remains federally banned.

Mendez said via email, "We are evaluating our options" in response to questions about whether the city would appeal the judge's ruling, keep fighting in state court or issue the certificates of occupancy. Attorneys for Roberts and Chaudhari did not respond to requests seeking comment.

In sending the case back to state court, Moore burned holes in the city's defense strategy. The federal judge determined that the city of Miami "has not identified, nor is this court aware of, a federal cause of action or federal remedy under the [Controlled Substances Act] that preempts applicable state law," according to Moore's Sept. 21 order.

Moore also noted that the Florida Legislature, when it enacted the rules and regulations for medical marijuana distribution, allowed cities and counties to pass ordinances banning or regulating the location of cannabis dispensaries within their boundaries.

Yet, the city of Miami has not taken any steps to pass any ordinances related to medical marijuana treatment centers, the technical name for dispensaries, Moore wrote.

"The city's elected officials have sought to skirt the performance of their own municipal function by invoking a federal court's jurisdiction to accomplish an outcome that is available to them in the first place," Moore wrote. "Unfortunately, for the city, this court has no jurisdiction to fulfill their responsibilities on their behalf."

Real estate landlords and marijuana companies have also sued the city of Miami Beach over zoning and building regulations. In December, Florida-based Altmed

(<https://therealdeal.com/miami/2020/12/14/miami-beach-faces-new-legal-challenges-over-medical-marijuana-restrictions/>) filed a court petition to overturn a Miami Beach Zoning Board of Adjustments July 2020 vote denying the company a variance for a permit to open a dispensary near a medical marijuana retail site owned and operated by MedMen

(<https://therealdeal.com/miami/2019/04/12/smoking-mad-medmen-sues-miami-beach-citing-marijuana-dispensary-restrictions/>), a national cannabis company based in Culver City, California. MedMen had also sued the city when it was initially denied building permits.

Altmed's petition was dismissed in February because it was filed past a court deadline for filing zoning-related appeals, according to court documents. In 2017, Miami Beach

(<https://therealdeal.com/miami/2021/06/07/miami-beach-board-approves-pharmacy-for-north-beach-project/>) passed an ordinance requiring that medical marijuana dispensaries must be 1,200 feet away from each other. The distance requirement also applies to regular pharmacies.

Contact Francisco Alvarado