

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12300
Non-Argument Calendar

D.C. Docket No. 0:20-cv-60276-RKA

JEAN FRANTZ GUILLAUME,

Plaintiff-Appellant,

versus

U.S. DEPARTMENT OF VETERANS AFFAIRS,
U.S. SMALL BUSINESS ADMINISTRATION,
KENNETH M. HYDE,
Administrative Judge of The United States
Small Business Administration,
THOMAS MCGRATH,
Director of the Center for Verification and
Evaluation for The Department of Veterans
Affairs,
MARCUS E. BOARD,
Chief Executive Officer of Premier, et al.,

Defendants-Appellees,

THE PREMIER COMPANY,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida

(February 24, 2021)

Before MARTIN, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Jean Frantz Guillaume appeals the dismissal of his *pro se* complaint for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1). He argues that the district court erred when it dismissed his complaint for lack of standing.¹

I

Mr. Guillaume is a disabled United States Navy Veteran and owns AFILY8 Government Solutions (“AFILY8”). Through the United States Department of Veterans Affairs’ Veterans First Contracting Program, AFILY8 aids other small and veteran-owned businesses to secure government contracts. As a service-disabled veteran-owned small business (“SDVOSB”), AFILY8 applied for and received placement on the “Veterans Administration Vendors List.”

After AFILY8 helped secure nine contracts for its clients, Earl Titus, a Veterans Affairs Onsite Examiner at the Premier Company, requested that AFILY8

¹ Mr. Guillaume filed a motion for summary judgment on November 18, 2020, and a motion for miscellaneous relief on December 4, 2020. Having reviewed both motions, they are summarily denied.

provide certain documents to maintain its status in the program. Mr. Guillaume provided the documentation to Mr. Titus, who then prepared a report recommending AFILY8's removal from the vendors list. The report was shared internally at Premier, and Marcus E. Board, Chief Executive Officer at Premier, sent a letter to Thomas McGrath, Director of the Center for Verification and Evaluation for the United States Department of Veterans Affairs, advising that AFILY8 should be removed from the vendors list. Mr. McGrath then wrote to the United States Department of Small Business Administration requesting that AFILY8 be removed from the vendors list, and the Small Business Administration removed AFILY8 from the vendors list.

Mr. Guillaume appealed the removal of AFILY8 to Kenneth M. Hyde, an administrative judge of the Small Business Administration. Judge Hyde denied Mr. Guillaume's request for relief.

Mr. Guillaume then brought suit in federal district court against the VA; the SBA; Judge Hyde; Premier; Mr. Board; Tiana Burnett, Senior Director of Operations at Premier; David Pearsall, Senior Director of Government Programs at Premier; and Mr. Titus. Mr. Guillaume alleged that the defendants violated his constitutional right to contract, his statutory right to contract, and his due process rights. He sought a declaratory judgment, compensatory damages, and punitive damages.

The defendants filed a joint motion to dismiss under Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure. The government defendants asserted that they were immune from suit under the doctrine of sovereign immunity, and the Premier defendants argued that Mr. Guillaume lacked standing to bring his claims. The district court found that Mr. Guillaume had failed to establish standing because the alleged injuries were only suffered by AFILY8, not by Mr. Guillaume, and because he failed to satisfy the standard for shareholder standing. The district court dismissed the complaint without prejudice. Though the dismissal was only based on the question of standing, the district court also noted that the government is generally immune from the types of claims brought by Mr. Guillaume.

II

Mr. Guillaume appeals the order granting the defendants' motion to dismiss. He argues the district court erred when it found he did not have standing to assert the claims in his complaint. In his brief, he claims he has a private right of action to bring this suit. Additionally, in a motion he filed on November 18, 2020, Mr. Guillaume contends that the district court was wrong to find that the diminution in AFILY8's value was insufficient for him to have standing. He further argues that the district court overlooked injuries he suffered personally, including reputational injuries.

Standing is a jurisdictional issue that we review *de novo*. *Taylor v. Polhill*, 964 F.3d 975, 980 (11th Cir. 2020). Applying that plenary standard, we affirm.

Generally speaking, shareholders may not sue individually for injuries suffered by their corporations. *See KMS Rest. Corp. v. Wendy's Int'l, Inc.*, 361 F.3d 1321, 1324–1325 (11 Cir. 2004). *See also Stevens v. Lowder*, 643 F.2d 1078, 1080 (5th Cir. 1981) (“An action to redress injuries to a corporation cannot be maintained by a shareholder in his own name but must be brought in the name of the corporation. The shareholder’s rights are merely derivative and can be asserted only through the corporation.”). The shareholder standing rule does not apply if a shareholder is able to show a violation of duty owed directly to him. *See Lowder*, 643 F.2d at 1080.

The VA has codified its procedure for adding small businesses owned by veterans to a preferred contracting list in 38 U.S.C. § 8127, which states that it deals only with the entities owned by veterans and that its goal is “to increase contracting opportunities for small business concerns owned by veterans.” 38 U.S.C. § 8127(a)(1). “If a small business concern is not included in the database because the [VA] Secretary does not verify the status of the concern as a small business concern or the ownership of the concern, the concern may appeal the denial of verification.” § 8127(f)(8)(A).

Here, the district court did not err in dismissing Mr. Guillaume’s complaint for lack of standing. Mr. Guillaume did not demonstrate that he suffered a distinct

injury, separate and apart from the diminution in value of his company's corporate assets, to support his contention that he has shareholder standing. Although he argues that he suffered because his name was taken from the VA registry for veteran-owned small businesses, it was AFILY8 that suffered the damages because the preferential contracting benefit extended to the business—not to him directly. Further, he did not allege or demonstrate a violation of duty owed directly to him. *See Lowder*, 643 F.2d at 1080.

Mr. Guillaume claims that his right to contract was violated, but it was his company that received VA authorization, and his company that entered into contracts with the VA; thus, it was AFILY8 that suffered an injury, and not Mr. Guillaume himself. Indeed, § 8127 allows for businesses denied verification by the VA Secretary to appeal, and does not provide for shareholders or owners of those businesses to sue on their own. *See* § 8127(f)(8)(A). Simply stated, Mr. Guillaume did not allege a violation of his statutory right to contract.

III

Mr. Guillaume and the government defendants both make arguments about the potential applicability of sovereign immunity. The district court, however, only

dismissed Mr. Guillaume's complaint on standing grounds, and we affirm on that basis, so we need not reach the issue of sovereign immunity.²

IV

The district court's order is affirmed.

AFFIRMED.

² Mr. Guillaume makes several arguments for the first time on appeal. He alleges that the defendants invaded his privacy and disclosed personal facts about him in violation of the Privacy Act of 1974 and other statutes. Mr. Guillaume did not raise claims or these arguments at the district court. Accordingly, we will not consider them on appeal. *See Ferrill v. Parker Group, Inc.*, 168 F.3d 468, 475 (11th Cir. 1996).