

RECEIVED

Jul 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

South Carolina Administrative Law Court Case No. 19-ALJ-17-0269-CC

Appellate Case No. 2020-000435

South Carolina Department of Revenue,

Respondent,

-vs-

Study Hall, LLC, d/b/a Study Hall, LLC,

Appellant.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellant Court Rules, Appellant hereby files this petition for rehearing.

Appellant respectfully requests a rehearing on Unpublished Opinion No. 2022-UP-296, which was filed on July 13, 2022.

The basis for the request for rehearing is that the Court fails to reconcile the fact that the Administrative Law Court imposed a penalty upon Appellant with no finding of violation on the part of Appellant. The ALC's role in a contested case is to weigh the facts to determine whether a violation for which a license-holder has been cited by the Respondent has occurred and then, upon finding the violation has occurred, to determine

an appropriate penalty for such violation. The only question before the ALC at the contested case hearing was whether Respondent erred in making a determination that Appellant's principal, Jon Starkey, allegedly lacked the requisite moral character for Appellant to sell alcohol. The ALC found that Appellant had not committed the violation for which it was cited by Respondent: having a principal with deficient moral character. Just the opposite—the ALC found that Starkey is of requisite moral character.

It defies logic for the ALC to then to have the authority to impose a penalty for some undefined dissatisfaction it may have with Appellant. Regardless of how broad the ALC's jurisdiction is in contested cases, it cannot be so broad that it can impose a penalty for unknown reasons that were not even put forth by the agency. Permitting the ALC to exercise such broad discretion is a violation the right to procedural due process before an administrative agency enshrined in the Constitution of the State of South Carolina. S.C. Const. Ann. Art. I, § 22.

Appellant respectfully requests that this Court reconsider this matter, find in Appellant's favor, and determine that the ALC erred in imposing any penalty on Appellant.

Respectfully submitted,

s/Kathleen McDaniel
Kathleen McDaniel (SC Bar No. 74826)
Sarah J.M. Cox (SC Bar 104316)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7913
Facsimile: (803) 904-7910

ATTORNEYS FOR APPELLANT