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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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

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

Appellate Case No. 2020-000435

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South Carolina Department of Revenue,

Respondent,

-vs-

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

Appellant.

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**PETITION FOR A WRIT OF CERTIORARI**

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Kathleen McDaniel (SC Bar No. 74826)  
Sarah J.M. Cox (SC Bar No. 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**

## INDEX

Certificate of Counsel.....	iii
Questions Presented .....	1
Statement of the Case .....	2
Statement of the Facts .....	4
Argument .....	7
Conclusion.....	10

## CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on August 12, 2022.



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Sarah J.M. Cox  
BURNETTE SHUTT & McDANIEL, PA  
ATTORNEYS FOR PETITIONER

Columbia, South Carolina  
September 8, 2022

## QUESTIONS PRESENTED

1. Did the Administrative Law Court act outside its statutory authority and violate Appellant's constitutional right to due process and equal protection under the law when it found in Appellant's favor on the sole factual issue before the court and yet imposed a penalty in the form of a 90-day suspension on Appellant?

## STATEMENT OF THE CASE

On March 20, 2019, Respondent South Carolina Department of Revenue (“Respondent”) issued a Notice of Intent to Cancel to Appellant. (R.pp. 378-379.) The sole reason cited by Respondent for its intent to cancel Appellant’s license and permit was that “selling alcoholic beverages without a license indicates that [Starkey lacks] the requisite moral character to hold an alcohol permit and license as required by [South Carolina law.]” (Id.)

Appellant timely protested the Notice of Intent to Cancel by letter received by Respondent on June 18, 2019. (R.pp. 381-382.) Respondent then issued its Determination on July 17, 2019, concluding that Starkey was not of good moral character as required by S.C. Code §§ 61-2-100(D), 61-4-520, and 61-6-1820(2) and therefore was not a proper person to hold an alcohol license. (R.pp. 383-387.) On August 14, 2019, Appellant timely filed a Request for Contested Case Hearing with the South Carolina Administrative Law Court (“ALC”). (R.p. 388.)

On December 17, 2019, the ALC held a hearing on this matter. (R.pp. 99-326.) Appellant called witnesses and presented evidence to prove Starkey’s good moral character. (Id.) Respondent called witnesses and presented evidence to attempt to prove Starkey is of poor moral character. (Id.) On January 15, 2020, the ALC issued its Order finding that Respondent had erred and that Starkey is of the requisite moral character for Appellant to hold an alcohol license. (R.pp. 1-12.) However, the ALC also ordered that “[Appellant’s] license and permit shall be suspended for ninety (90) days.” (Id.) It is this 90-day suspension that Appellant challenges in this appeal.

On January 23, 2020, Appellant moved the ALC pursuant to SCALC Rule 29(D), to reconsider its Order filed January 15, 2020, so as to remove the 90-day suspension and to stay the suspension while considering the motion. (R.p. 22.) On February 5, 2020, the ALC granted Appellant's motion for stay pending its decision on the motion for reconsideration. (R.p. 14.) On March 9, 2020, the ALC denied Appellant's motion to reconsider. (R.p. 4.)

An Appeal by Study Hall, LLC to the Court of Appeals followed. Respondent South Carolina Department of Revenue did not file any cross-appeal.

On March 11, 2020, Appellant filed a Petition for Writ of Supersedeas, requesting that the suspension be stayed during the pendency of this appeal. (R.p. 20.) On March 13, 2020, the ALC issued a Writ of Supersedeas staying the suspension during the pendency of this appeal. (R.p. 20.)

On July 13, 2022, the Court of Appeals issued its Opinion on the Appeal, affirming the ALC's order. Petitioner filed his Petition for Rehearing with respect to the Court of Appeals' Opinion on July 28, 2022, and this Petition was denied by the Order Denying Petition for Rehearing issued by the Court of Appeals dated August 12, 2022.

Unless otherwise specified herein, all capitalized terms hereinbelow are intended to have the meanings given to said terms in the Final Brief and Final Reply Brief of Appellant.

## STATEMENT OF THE FACTS

The relevant facts of this case, as have been set forth before the ALC and Court of Appeals in the pleadings and briefs filed in connection with this matter, are as follows: Appellant holds an on-premises beer and wine permit issued by Respondent. Appellant also holds a liquor-by-the-drink license issued by Respondent. Appellant's on-premises beer and wine permit and liquor-by-the-drink license expired on November 30, 2018. On December 7, 2018, Appellant applied for a renewal of its on-premises beer and wine permit and its restaurant liquor-by-the-drink license at the offices of Respondent. (R.pp. 328-331.) On the same date, Respondent issued a Renewal Notice of Denial (the "Notice of Denial") stating that the renewal was denied because a principal, Jonathan Starkey ("Starkey"), had not filed state income taxes for the tax years from 2014 through 2017. (R.p. 376.) The Notice of Denial further stated that Starkey had 90 days to file his taxes. (Id.) The Notice of Denial also required Appellant to furnish verification of its liability insurance policy complying with S.C. Code Ann. § 61-2-145. (Id.)

Before leaving Respondent's offices, Starkey immediately provided proof of Appellant's liability insurance policy to Respondent. (R.p. 228.) Starkey's understanding at the time was that he had 90 days to provide proof that he had filed his taxes and if he did not do so, Appellant's on-premises beer and wine permit and its restaurant liquor-by-the-drink license would be suspended. (R.pp. 228-229.) Starkey was not aware that Appellant did not have an on-premises beer and wine permit and restaurant liquor by the drink license until February 28, 2019. (R.p. 238.)

On February 28, 2019, State Law Enforcement Division ("SLED") agents conducted an undercover alcohol operation at Appellant's premises and purchased a single beer from Appellant. (R.pp. 334-335.) Following the purchase, the agents

obtained a search warrant and seized approximately \$16,000 worth of alcohol from Appellant. (R.p. 31.) Because Starkey was not present to be issued a ticket, SLED agents obtained two arrest warrants for Starkey for violation of S.C. Code Ann. § 61-4-560 for Operation without a Permit and § 61-6-4060(A), for Unlawful Storage of Liquor in a Place of Business. (R.p. 335.)

On March 7, 2019, Appellant furnished the required tax documentation to Respondent, and Respondent issued an on-premises beer and wine permit and a restaurant liquor-by-the-drink permit to Appellant. (R.pp. 332-333.)

On March 20, 2019, Respondent South Carolina Department of Revenue (“Respondent”) issued a Notice of Intent to Cancel to Appellant. (R.pp. 378-379.) The sole reason cited by Respondent for its intent to cancel Appellant’s license and permit was that “selling alcoholic beverages without a license indicates that [Starkey lacks] the requisite moral character to hold an alcohol permit and license as required by [South Carolina law.]” (Id.)

Appellant timely protested the Notice of Intent to Cancel by letter received by Respondent on June 18, 2019. (R.pp. 381-382.) Respondent then issued its Determination on July 17, 2019, concluding that Starkey was not of good moral character as required by S.C. Code §§ 61-2-100(D), 61-4-520, and 61-6-1820(2) and therefore was not a proper person to hold an alcohol license. (R.pp. 383-387.) On August 14, 2019, Appellant timely filed a Request for Contested Case Hearing with the South Carolina Administrative Law Court (“ALC”). (R.p. 388.)

On December 17, 2019, the ALC held a hearing on this matter. (R.pp. 99-326.) Appellant called witnesses and presented evidence to prove Starkey’s good moral

character. (Id.) Respondent called witnesses and presented evidence to attempt to prove Starkey is of poor moral character. (Id.)

On January 15, 2020, the ALC issued its Order on the sole issue before it: whether Starkey is of the requisite moral character for Appellant to hold an alcohol license, finding that Starkey is indeed of good moral character. (R.pp. 1-12.) However, the ALC also ordered that “[Appellant’s] license and permit shall be suspended for ninety (90) days.” (Id.) It is this 90-day suspension that Appellant challenges in this appeal.

## ARGUMENT

Appellant brings this appeal because the ALC *sua sponte* imposed a penalty on Appellant even though the ALC found in Appellant's favor on the sole issue before it. When the ALC found that Appellant had not committed the offense alleged in the Notice of Intent to Cancel (that a principal possesses poor moral character), its analysis should have ended there. Instead, the ALC elected to punish Appellant for mistakenly continuing to sell alcohol after the expiration of its permit and license, which is not a violation of any regulation. It is plainly outside the ALC's statutory authority to impose an administrative punishment without finding a corresponding regulatory violation. Because the ALC acted outside its statutory authority, Appellant was deprived of its right to equal protection and due process under S.C. Const. Art. I § 3, rendering this matter appropriate for consideration by this Court.

The question of whether "appropriate penalty" can include a penalty which is not based upon a violation of alcoholic beverage regulations is a novel one. "An administrative agency has only the powers conferred on it by law and must act within the authority created for that purpose." S.C. Dep't of Revenue v. Sandalwood Soc. Club, 399 S.C. 267, 278, 731 S.E.2d 330, 336 (Ct. App. 2012) (internal citations removed). "DOR has the authority to determine an appropriate administrative penalty, within the statutory limits established by the legislature, after the parties have had an opportunity for a hearing on the issues . . . and in assessing a penalty, DOR should give effect to the major purpose of a civil penalty, which is deterrence." Id. at 278-79, 336 (emphasis added). "[O]nly DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme." Id. at 280.

In a contested case hearing before the ALC, “[the ALC] is the fact-finder and it is [the ALC’s] prerogative ... to impose an appropriate penalty based on the facts presented.” *Id.* at 280, 337. However, the ALC can only penalize a licensee for violations cited by DOR. See *id.* at 278.

Here, Respondent cited only one reason in its Determination for its cancelation of Appellant’s license. That one reason was Starkey’s alleged lack of good moral character. (R.p. 390.) Per S.C. Code Ann. §§ 61-2-100(D) and 61-6-1820(2), a business’s principals must be of good moral character for the business to be issued a license or permit to sell alcohol. A business’s principal either is or is not of sufficient moral character to hold an alcohol license or permit. Thus, if a business’s principal is not of good moral character, the only appropriate penalty is revocation or cancelation of said license. Therefore, if the ALC had found that Starkey, Appellant’s sole principal, lacked good moral character, it could only cancel or revoke Appellant’s alcohol license and permit. On the other hand, if the ALC found that Starkey had the requisite good moral character, the ALC could only allow Appellant to retain its license and permit. No other options are available under the law for the imposition of a penalty on a party with sufficient good moral character without factual evidence of at least one violation of a regulation. There was no such violation found in this matter.

Notably, nowhere in its Order does the ALC state the statutory basis for the imposition of the 90-day suspension. The Order points to no statute that Appellant violated which would give the ALC authority to impose any sort of penalty for selling alcohol without a license. Neither did the Court of Appeals identify any statute which would give the ALC authority to impose any penalty for selling alcohol without a license.

None exists. The reason for this is self-evident: if a business is selling alcohol without a license or storing alcohol without a license, there is no license upon which the ALC or DOR can act. The ALC and DOR have the authority to penalize a license-holder for committing certain other crimes, such as permitting lewd entertainment (S.C. Code Ann. § 61-4-580(4)) or permitting gambling (S.C. Code Ann. § 61-4-580(3)). SC Revenue Procedure #13-2. However, the fact remains that there is no statutory basis for the ALC or DOR to penalize an alcoholic beverage license-holder for operating without a license in the past.

Moreover, if the ALC had imposed a penalty for the violation of statutory provision other than the requirement of sufficient moral character, that also would have exceeded the ALC's authority because the existence of sufficient moral character was the only issue before the ALC. The sole basis of Respondent's decision to cancel Appellant's alcohol license and permit was lack of good moral character. No other administrative issue was before the ALC.

The ALC analyzed Starkey's moral character and held that Starkey "possesses the requisite moral character to hold an alcoholic beverage license" and that Appellant meets the applicable requirements for licensure. (R.p. 1-12.) Because this was the only issue before the ALC and the court found in favor of Appellant, penalizing Appellant *in any way* is acting outside the statutory authority of the agency. Therefore, the punitive portion of ALC's Order should be reversed because it was imposed outside the statutory authority of the ALC, and Appellant should be allowed to continue to operate without a suspension.

The ALC plainly acted outside its statutory authority when it penalized Appellant without making any finding that could lead to a legal penalty.

**CONCLUSION**

For the foregoing reasons, Petitioner asks that the Court grant this Petition for a Writ of Certiorari to review the Court of Appeals' decision in this matter.

Respectfully submitted,



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Kathleen McDaniel (SC Bar No. 74826)  
Sarah J.M. Cox (SC Bar 104316)  
BURNETTE SHUTT & McDANIEL, PA  
PO Box 1929  
Columbia, South Carolina 29202  
Tel. (803) 904-7913  
Fax (803) 904-7910  
[KMcDaniel@BurnetteShutt.Law](mailto:KMcDaniel@BurnetteShutt.Law)

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South Carolina Department of Revenue,

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Appellant.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that a true copy of Appellant's Petition for Certiorari to the Supreme Court in the above-referenced matter has been served on all parties of record by emailing a copy of the same to the following:

Patrick McCabe, Esq.  
SOUTH CAROLINA DEPARTMENT OF REVENUE  
300A Outlet Pointe Boulevard  
Columbia, SC 29211  
[Patrick.mccabe@dor.sc.gov](mailto:Patrick.mccabe@dor.sc.gov)

\_\_\_\_\_/s/Sarah J.M. Cox\_\_\_\_\_  
Sarah J.M. Cox (Bar No. 104316)  
BURNETTE SHUTT & McDANIEL, PA  
Post Office Box 1929  
Columbia, South Carolina 29202  
P: 803.904.7930  
F: 803.904.7910  
[SCox@BurnetteShutt.Law](mailto:SCox@BurnetteShutt.Law)

**ATTORNEY FOR APPELLANT STUDY  
HALL, LLC**

September 8, 2022

Columbia, South Carolina