

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No. 2022-001250

South Carolina Department of Revenue,

Respondent,

-vs-

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

Petitioner

BRIEF OF Petitioner

RECEIVED
AUG 03 2023
S.C. SUPREME COURT

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QUESTION 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 but nevertheless imposed a penalty in the form of a 90-day suspension on Appellant?

STATEMENT OF THE CASE

Appellant Study Hall, LLC d/b/a Study Hall, LLC (“Appellant”) comes before this Court to ask that this Court find that the Administrative Law Court (the “ALC”) exceeded its authority when it found for Appellant on the sole issue properly before it, yet still imposed a penalty on Appellant. Appellant holds an on-premises beer and wine permit issued by Respondent South Carolina Department of Revenue (“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. App. at 376-379. 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. App. at 424. 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. App. at 276. 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. App. at 276-277. 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. App. at 286.

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. App. at 382-383. Following the purchase, the agents obtained a search warrant and seized approximately \$16,000 worth of alcohol from Appellant. App. at 79. 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. App. at 383.

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. App. at 380-381.

On March 20, 2019, Respondent issued a Notice of Intent to Cancel to Appellant. App. at 426-427. 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. App. at 429-430. Respondent then issued its Determination on July 17, 2019, concluding:

Analysis:

The Department properly canceled the Licensee’s permit and license because the Licensee’s principal is not of good moral character as required by §§ 61-2-100(D), 61-4-520, and 61-6-1820(2).

App. at 431-435.

On August 14, 2019, Appellant timely filed a Request for Contested Case Hearing with the South Carolina Administrative Law Court ("ALC"). App. at 436.

On December 17, 2019, the ALC held a hearing on this matter. App. at 147-374. 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. App. at 49-60. 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. App. at 70. On February 5, 2020, the ALC granted Appellant's motion for stay pending its decision on the motion for reconsideration. App. at 62. On March 9, 2020, the ALC denied Appellant's motion to reconsider. App. at 52.

Appeal to the Court of Appeals by Study Hall, LLC 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. App. at 68. On March 13, 2020, the ALC issued a Writ of Supersedeas staying the suspension during the pendency of this appeal. App. at 68.

On July 13, 2022, the Court of Appeals issued its Opinion on the Appeal, affirming the ALC's order. App. at. 535-536. Petitioner filed his Petition for Rehearing with respect to the Court of Appeals' Opinion on July 28, 2022 (App. at 538-539), and this Petition was denied by the Order Denying Petition for Rehearing issued by the Court of Appeals dated August 12, 2022 (App. at 541). This appeal follows.

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

STANDARD OF REVIEW

"In an appeal from the decision of an administrative agency, the Administrative Procedures Act [(the APA)] provides the appropriate standard of review." S.C. Dep't of Revenue v. Meenaxi, Inc., 417 S.C. 639, 648, 790 S.E.2d 792, 796-97 (Ct. App. 2016). "Pursuant to the APA, this court may reverse or modify the ALC if the appellant's substantial rights have been prejudiced because the administrative decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." MRI at Belfair, LLC v. S.C. Dep't of Health & Env'tl. Control, 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct. App. 2011).

ARGUMENT

Appellant brings this appeal because the ALC acted outside its statutory authority when it found that Appellant had not committed the offense alleged in the Notice of Intent to Cancel and yet imposed a penalty on Appellant *sua sponte*.

I. Due Process Requirements at the Agency Level

“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. “[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.

The basic requirements for procedural due process before an administrative agency are enshrined in the Constitution of the State of South Carolina:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const. Ann. Art. I, § 22 (emphasis added).

In addition, the Administrative Procedures Act provides that “[n]o revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts

or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.” S.C. Code Ann. § 1-23-370(c).

In an alcohol licensing matter where Respondent seeks to revoke or suspend a permit, Respondent must provide notice of an alleged violation and then must conduct an investigation and issue a departmental determination to the permittee or licensee before it can revoke or suspend a permit. S.C. Code Ann. § 61-4-590(B). Once an agency has issued its department determination, the licensee may then challenge the agency’s departmental determination before the ALC by requesting a contested case hearing, which “must be heard by the Administrative Law Court pursuant to the South Carolina Revenue Procedures Act and the Administrative Procedures Act.” S.C. Code Ann. § 61-2-260 (Supp. 2005).

II. Due Process Requirements at the Administrative Law Court

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.” Sandalwood Soc. Club, at 280, 337. However, the ALC can only penalize a licensee for violations cited by DOR. See *id.* at 278. This is due to the basic due process tenet of notice.

The specific requirements for a notice of hearing in a contested case are set forth in the Administrative Procedures Act, S.C. Code Ann. § 1-23-320. This notice must include a:

- (1) statement of the time, place, and nature of the hearing;
- (2) statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) reference to the particular sections of the statutes and rules involved;

(4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

S.C. Code Ann. § 1-23-320(B)(4). These requirements are satisfied by two different documents in a contested case before the ALC.

First, after the licensee requests a contested case hearing, the agency must file and serve on all parties an "Agency Information Sheet," which includes "identifying information of the agency action or inaction that is the subject of the hearing." SCALC Rule 12(B) (emphasis added). This gives the ALC and all parties notice of which specific issues will be heard and decided by the ALC at the contested case hearing.

Second, the ALC issues a Notice of Contested Case Hearing, which "sets forth the date, time, place, and purpose of the hearing, the administrative law judge who will conduct the hearing, and any other matters necessary for the prompt resolution of the matter." SCALC Rule 15.

III. Discussion

It cannot be disputed that the sole basis of Respondent's action against Appellant was the issue of Mr. Starkey's moral character. This is consistently reflected at every stage of this action.

First, Respondent provided the notice of its intended actions to Appellant as required under § 1-23-370(c) when it served its Notice of Intent to Cancel on March 20, 2019. App. at 426-428. The Notice of Intent to Cancel expressly states that Respondent intended to cancel Appellant's license and permit because Respondent alleged that Mr. Starkey was of deficient moral character to act as Appellant's principal. *Id.*

Next, Respondent provided Appellant with its Department Determination, which describes the "Matter In Dispute" as:

Did the South Carolina Department of Revenue (Petitioner) properly cancel the Respondent's on-premises beer and wine permit and restaurant liquor by the drink license based upon the fact the Respondent's principal is not of good moral character pursuant to S.C. Code Ann. §§ 61-2-100(D), 61-4-520 and 61-6-1820(2) (2009)?

App. at 432.

Finally, the sole issue in this matter is reflected in the Agency Information Sheet filed by Respondent, which describes the "Matter In Controversy" as:

Did the South Carolina Department of Revenue (Petitioner) properly cancel the Respondent's on-premises beer and wine permit and restaurant liquor by the drink license based upon the fact the Respondent's principal is not of good moral character pursuant to S.C. Code Ann. §§ 61-2-100(D), 61-4-520 and 61-6-1820(2) (2009)?

S.C. Code Ann. §§ 61-2-100(D), 61-4-520, 61-6-1820(D), 61-4-150, 61-6-2610, and 61-2-100(D)

App. at 530-531.

It is also undisputed that at the time of the hearing, Appellant was only on notice that it would have to prove the quality of Mr. Starkey's moral character, not that it would have to defend against any other possible violations. At the hearing, counsel for Respondent stated plainly in his opening statement "[Respondent] determined that Mr. Starkey is not fit to hold a beer and wine permit as defined by 61-4-50, and [Respondent] also determined that Mr. Starkey is not of good moral character as defined by 61-6-1820." App. at 153. Respondent's counsel went on to conclude his opening statement with Respondent's request to the ALC: "[W]e are seeking a cancellation of [Appellant's] on-premise beer and wine permit, a cancellation of [Appellant's] restaurant liquor-by-the-

drink license and an order from the Court to sell the contraband alcohol fees [sic] pursuant to South Carolina Code 61-6-4310.” App. at 156.

It is also undisputed that the ALC in this case found for Appellant. The ALC states plainly, “[Appellant] has met its burden of demonstrating compliance with the statutory requirements for licensure. [Respondent’s] proposed cancellation of [Appellant’s] beer and wine permit and business liquor by the drink license is denied.” App. at 59. Simply put, the ALC found that Appellant did not commit the violation for which it was cited by Respondent—i.e. having a principal with deficient moral character.

Finally, it is undisputed that the ALC imposed a penalty on Appellant without citing a corresponding violation. 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 that would give the ALC authority to impose any sort of penalty. 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 grounds were before the ALC.

Although the ALC has not tied the penalty of suspension to a violation cited by Respondent, the ALC purports to base the penalty on the *facts* presented, notwithstanding the lack of cited violation to which to tie the penalty, stating “While the Department did not seek a penalty specifically for this violation, it provided a factual basis for the Department’s proposed cancellation.” App. at 65. In other words, instead of

stopping after determining Appellant did not commit the violation for which it was cited, the ALC went on to consider whether the facts presented at the hearing (for the sole purpose of establishing Mr. Starkey's moral character) indicated any *other* violation of the state's alcohol laws had occurred. This was a violation of Appellant's due process right to notice of the claims against it and an opportunity to respond to those claims. Notably, even though the ALC went on to consider whether the facts presented at the hearing constituted any violation of the state's alcohol laws, *it was unable to do so, and cited no violation whatsoever when assigning a penalty.*

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. App. at 49-60. 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.

An ALC which acts outside its limited statutory authority and issues penalties untethered from corresponding violations plainly exceeds the scope of its purpose. Unlike the unified court system with its inherent equitable powers, the ALC has no inherent equitable power. The ALC is an agency and court of record within the executive branch of the government and was created by the legislature by Act No. 181 of 1993 to provide an independent forum for hearing contested cases of other state agencies. Because the ALC is a relatively new statutory creation, there has been very little analysis to confirm the limits of its statutory jurisdiction. This case is the first case after Sandalwood that

would confirm the precise limits of what the ALC can do with its statutory power, and what it cannot do. This Court should follow the path laid by Sandalwood and remind the ALC that its power does not extend into equity and is strictly proscribed by its enabling statutes and regulations.

CONCLUSION

For the foregoing reasons, Appellant Study Hall, LLC d/b/a Study Hall, LLC, respectfully asks that this Court reverse the 90-day suspension in the ALC's January 15, 2020 and March 9, 2020 Orders and allow Appellant to continue to sell alcohol without suspension.

Respectfully submitted,

s/ Kathleen McDaniel

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July 26, 2023

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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

Appellate Case No. 2022-001250

South Carolina Department of Revenue,

Respondent,

-VS-

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

Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the **BRIEF OF APPELLANT** and **APPENDIX** in the above-referenced matter has been served on all parties of record by emailing a copy of the same to the following:

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July 26, 2023

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Subject: SCDOR v. Study Hall, LLC d/b/a Study Hall, LLC -- Appellate Case No. 2022-1250
Attachments: 2023-07-26 APPENDIX.pdf; 2023-07-26 FINAL Brief of Appellant.pdf

Dear Counsel:

I have attached the Brief of Appellant and Appendix which are being filed with the SC Supreme Court today.

Kind regards,
Amy