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S.C. SUPREME COURT

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, ... Appellant.

BRIEF OF THE RESPONDENT

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Columbia, South Carolina
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STATEMENT OF ISSUES ON APPEAL

I. Did Petitioner Study Hall preserve its argument that the Administrative Law Court violated its constitutional rights to due process and equal protection by imposing a 90-day suspension of Study Hall's alcohol licenses?

II. Did the Court of Appeals correctly affirm the Administrative Law Court's authority to impose an appropriate penalty—a 90-day suspension—as part of its decision to grant the renewal of an alcohol license, where the ALC found in a *de novo* hearing that the license holder had indisputably made unlawful sales of alcohol during a time that its license was expired?

INTRODUCTION

This appeal presents two narrow and straightforward issues for the Court. First, can a party raise constitutional challenges to the final order of the Administrative Law Court (ALC) where it failed to raise those constitutional challenges during the trial, in its Motion to Reconsider, or in its initial briefs to the Court of Appeals? Second, does the ALC have the discretion to impose a narrowly tailored penalty on a license holder—such as a 90-day suspension of its alcoholic beverage license—as a penalty for violations the license holder admits occurred while the renewal of the license was under administrative review?

Respondent South Carolina Department of Revenue acknowledges the ALC ultimately determined Jonathan Starkey (Starkey), the principal and owner of Petitioner Study Hall, LLC (Study Hall), possessed the requisite moral character to hold an alcoholic beverage license under South Carolina law. However, during the *de novo* hearing undisputed evidence was presented showing that Study Hall sold beer, wine, and alcoholic liquor between December 7, 2018 and March 7, 2019, despite the fact the Department had notified Study Hall in writing on December 7, 20218 that its license had not been renewed and that it "MUST cease all sales of beer, wine, and/or liquor until you receive your renewed license." (R. p. 2, 376). Starkey admitted to the unlawful sales. (R. pp. 2, 5–6, 11).

The ALC found Starkey and Study Hall had failed to follow the law and continued to sell alcoholic beverages after its permit and license had expired, but concluded that this failure was based on confusion regarding the Department's notice. (R. pp. 10–11). Thus, rather than cancelling Study Hall's alcoholic beverage licenses entirely, the ALC granted the renewal of the licenses but ordered they be suspended for 90 days from the date of the ALC's order. The ALC clearly explained that it was "imposing a suspension for slightly less than the length of time [Study Hall]

operated without a permit and license [because it] is certainly less severe than a cancelation that might disqualify Starkey from being permitted or licensed and less severe than a revocation with similar consequences." (R. p. 17). This reflects the ALC's reasoned decision to impose a narrow penalty for the unlawful sales based on the facts presented in the hearing. The Court of Appeals upheld this penalty as an appropriate exercise of the ALC's discretion.

On appeal, Study Hall now contends this ALC's decision was not only outside its statutory authority, but argues—for the first time—that the decision violated Study Hall's constitutional rights to due process and equal protection. This Court should reject these constitutional challenges because they are waived and not properly preserved, affirm the Court of Appeals, and uphold the ALC's final order.

STATEMENT OF THE CASE

On August 14, 2019, Study Hall commenced this proceeding in accordance with the Revenue Procedures Act, S.C. Code Ann. § 12-60-10 et seq., by filing a request for a contested case hearing challenging the Department's July 15, 2019 final agency Determination. The Determination sought to cancel Study Hall's alcohol licenses on the grounds that Starkey lacked the requisite moral character to possess an alcohol license, as required under South Carolina law. (R. p. 390) (citing S.C. Code Ann. §§ 61-2-100(D), 61-4-520, and 61-6-1820(2)).

The ALC conducted a contested case hearing on December 17, 2019, the Honorable H. W. Funderburk, Jr. presiding. The parties presented documentary evidence, as well as testimony from a number of witnesses, including law enforcement officers, SLED, a Department employee, and Starkey. On January 15, 2020, the ALC entered a Final Order finding that Starkey is of good moral character and granting the issuance of the alcohol licenses subject to certain conditions, including the imposition of a 90-day suspension. (R. p. 1). Study Hall filed a Motion for Reconsideration

and Stay on January 23, 2020. (R. p. 22). The ALC granted the Motion for Stay but denied the Motion to Reconsider. (R. p. 14, 15).

Study Hall filed its Notice of Appeal on March 10, 2020. On March 11, 2020, Study Hall filed a Petition for Writ of Supersedeas, asking the ALC to stay the imposition of the 90-day suspension during the pendency of the appeal. (R. p. 33). On March 13, 2020, the ALC issued a Writ of Supersedeas. (R. p. 20).

In an unpublished opinion dated July 13, 2022, the Court of Appeals affirmed the ALC's Final Order.

STANDARD OF REVIEW

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. Olson v. S.C. Dep't of Health & Env't Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500–501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Env't Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken Cnty. Gov't, 366 S.C. at 107. S.C. Code Ann. § 1-23-610(B) provides the following standard:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> 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 other error of law;
> e) clearly erroneous in the view of the reliable, probative, and substantial evidence on the whole record; or
> f) arbitrary or capricious of characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The ALC's decision to impose a 90-day suspension should be affirmed because the conclusion reached by the Court is not in violation of any constitutional or statutory provisions, contains no errors of law; and its conclusion was not arbitrary, capricious, or characterized by the abuse of discretion.

STATEMENT OF FACTS

Study Hall held several alcoholic licenses, all of which expired on November 30, 2018.[1] Study Hall failed to timely renew the alcohol licenses until December 7, 2018, when it submitted to the Department an ABL Renewal application. (R. p. 328). That same day, the Department sent Study Hall a Renewal Notice of Denial. (R. p. 376). The notice advised Study Hall the renewal was denied because it had not been timely submitted, a late filing fee was required, it had not provided a copy of its liquor liability policy, and its principal—Starkey—had failed to file income taxes. (R. pp. 1–2, 376). The notice contained the following language in bold print: "**You MUST cease all sales of beer, wine, and/or liquor until you receive your renewed license.**" *Id.* Starkey admitted he received the notice of denial, but did not read it. (R. p. 227).

Study Hall did not provide the requested information to the Department until March 7, 2019, at which time the Department issued the alcohol licenses. (R. p. 2). One week after issuing the alcohol licenses to Study Hall, the Department learned the State Law Enforcement Division (SLED) had conducted an undercover investigation of Study Hall on February 28, 2019, and discovered Study Hall was illegally selling alcohol without a license. SLED charged Starkey with operating without a permit, and unlawfully storing liquor. (R. p. 4). The SLED investigation also

[1] Study Hall held an on-premises beer and wine permit, as well as a restaurant alcoholic liquor by the drink license. (R. p. 1). For the sake of ease, the permit and license are referred to herein collectively as the "alcohol licenses."

revealed sales reports showing unlawful alcohol sales between December 8, 2018 and March 7, 2019. *Id.* In light of this new information about Study Hall's illegal sales, the Department issued a Notice of Intent to Cancel to Study Hall on March 20, 2019.[2] (R. p. 378). This notice, as well as the subsequent final Department Determination, concluded that because Starkey—the sole principal of Study Hall—had been arrested for the sale of alcohol without a license on February 28, 2019, he lacked the requisite moral character to hold an alcohol license and permit as required by S.C. Code Ann. § 61-2-100(D), 61-4-520, and 61-6-1820(2). (R. p. 389).

While Study Hall's protest was pending at the ALC, the Department obtained new information relevant to Starkey's moral character. Therefore, during the ALC's hearing on the contested case, the Department presented additional evidence in support of its Determination, including:

- Kathrine Gatto testified that her son had been killed by an intoxicated underage employee of Starkey's business in Statesboro, Georgia. (R. p.145).

- Deputy Chief Bryant of Statesboro, Georgia testified that Starkey's prior business, Rude Rudy's, had been the location of a homicide/murder and the business had a culture that "allows underage employees and patrons to drink alcohol"; that even after the death of Michael Gatto, Starkey's business continued to serve underage individuals' alcohol; and that Starkey surrendered his City of Statesboro alcohol license as part of a settlement agreement to avoid the revocation of his license.[3] (R. pp. 121, 128–30, 145, 413).

- SLED Special Agent Keith Dorman testified that he issued Study Hall an administrative citation on October 13, 2019, for selling alcohol on Sunday without a license. (R. p. 192–95, 464).

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[2] The cancellation of the permit and license gives Study Hall the ability to reapply for a license and permit with a new principal. However, the revocation of a permit or license prevents Study Hall from holding a beer permit for two years and an alcohol license for five years.

[3] The application for an alcohol permit or license in South Carolina requires the applicant attest that they have not previously had an alcohol beverage permit or license suspended or revoked.

On January 15, 2020, the ALC issued its Final Order in which it granted Study Hall's renewal application and denied the Department's request to cancel the alcohol licenses, but finding that Study Hall's alcohol licenses "shall be suspended for ninety (90) days, beginning with the date that this order becomes final." (R. p. 1).

LEGAL ARGUMENT

I. Study Hall's constitutional challenges, which it has raised for the first time in this appeal, were not previously raised or preserved and therefore are not properly before this Court.

Study Hall's sole issue on appeal claims the ALC violated its constitutional rights to due process and equal protection. These constitutional arguments—which Study Hall has never raised prior to this appeal—are not properly before this Court. Schofield v. Richland Cnty. Sch. Dist., 316 S.C. 78, 447 S.E.2d 189 (1994) (issues not raised to or ruled upon by trial judge is not properly before Supreme Court on appeal). The rules regarding issue preservation "prevent[] a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 406, 526 S.E.2d 716, 724 (2000).

"Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal. Glover v. Cnty. of Charleston, 361 S.C. 634, 606 S.E.2d 773 (2004), overruled by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005); see also Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) (holding that a due process claim raised for the first time on appeal was not preserved); Merriman v. Minter, 298 S.C. 110, 378 S.E.2d 441 (1989) (refusing to consider an equal protection challenge to a statute on appeal where it was not raised to the trial court).

While South Carolina does not require attorneys to use the technical name of a legal doctrine to preserve an issue, the issue in question must be made sufficiently clear so that it can be understood by the judge. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although an objection was not phrased in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue). Trial transcript reveals Study Hall made no attempt to argue that the Department of Revenue's actions violated their rights to due process or equal protection. The only reference to due process within the trial court record is when Study Hall's attorney offered it as the basis of an objection to testimony. (R. p. 169). The ALC did not consider this single utterance of the term "due process" to constitute a constitutional challenge, because it did not address any constitutional arguments in its Final Order dated January 15, 2020. (R. p. 1–14). If Study Hall believed that these constitutional issues were presented to the ALC, one would expect the court's failure to consider and rule upon these issues to be the primary focus in Study Hall's Motion for Reconsideration. However, Study Hall's motion failed to even mention due process or equal protection. (R.p.17-p.20).

Study Hall's Final Brief before the Court of Appeals was silent regarding any constitutional objections to the ALC's Final Order. (App. 002-012). In fact, the first time Study Hall ever raised a constitutional challenge in this case was in its Reply Brief at the Court of Appeals. (App. 032-046). This is not proper issue preservation. Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("Petitioner may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the Petitioner's brief."); see also Animal Prot. Soc. of Durham, Inc. v. State, 95 N.C. App. 258, 382 S.E.2d 801 (1989) (same); 5 C.J.S. Appeal & Error Sec. 1324(1) at 329 (1958) ("A matter raised for the first time in oral argument or in the reply brief will

not be considered by the appellate court."). Because the issues of equal protection and due process were not presented nor ruled upon by the trial court or properly presented to the Court of Appeals, they are not preserved for this appeal.

Even assuming that the issues of due process and equal protection are properly before this Court, Study Hall's claims still fail because an equal protection claim cannot succeed without the identification of a similarly situated party. Hill v. S.C. Dep't of Health & Env't Control, 389 S.C. 1, 698 S.E.2d 612 (2010) (finding that circuit court erred in finding an equal protection violation rights when the respondent offered no evidence show he was similarly situated). The record indicates Study Hall failed to present any evidence that identified a similarly situated party that was subject to unequal treatment.

Study Hall's due process claim suffers from a similar defect because there was no evidence presented to establish a substantial prejudice of abuse of Study Hall's right to due process. Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (noting a due process violation within an administrative proceeding requires a showing of substantial prejudice). Moreover, Study Hall cannot claim it was deprived of due process when it fully participated in the contested case hearing, presented evidence and cross-examined witnesses, and ultimately persuaded the ALC **not** to uphold the Department's determination to cancel its alcohol licenses. Harbit v. City of Charleston, 382 S.C. 383, 394, 675 S.E.2d 776, 781 (Ct. App. 2009), as amended (May 4, 2009) ("[t]he existence of review is an indication of the presence of due process, rather than its absence.").

Study Hall's due process claim also fails to establish an arbitrary and capricious deprivation of an interested rooted in state law. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). Permits and licenses to sell alcohol are not contracts or rights of

property; rather, they are permits issued in the exercise of the police power to do what would otherwise be considered illegal. Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 57, 26 S.E.2d 22, 25 (1943). The suspension of Study Hall's alcohol licenses are not the deprivation of a vested interested rooted in state law. Kan Enterprises, Inc. v. S.C. Dep't of Revenue, 420 S.C. 596, 803 S.E.2d 882 (Ct. App. 2017) (rejected the claim that the denial of a renewal application deprives the applicant of a vested interest). Even if a license or permit was a vested right, South Carolina's has a legitimate governmental interest in ensuring that only individuals who have the requisite moral character to sell alcohol. Moreover, the suspension, revocation, or cancelation of a license and permit are rationally related to protecting the public health, safety, and welfare of the citizens of this State. Therefore, Study Hall cannot establish that a ninety-day suspension is an arbitrary and capricious deprivation of an interest.

Because Study Hall failed to properly preserve any constitutional arguments in the courts below, this Court should dismiss its appeal here.

II. The Court of Appeals correctly affirmed the Administrative Law Court's authority to impose an appropriate penalty—a 90-day suspension—as part of its decision to grant the renewal of an alcohol license, where the ALC found in a *de novo* hearing that the license holder had indisputably made unlawful sales of alcohol during a time that its license was expired.

a. Contested case hearings before the ALC are *de novo* hearings.

The suspension or revocation of an alcohol license is controlled by S.C. Code Ann. § 12-60-1310 to 12-60-1350 (2014). Under these statutes, the Department issues the licensee a notice informing it of the Department's decision concerning the status of the license or of any penalty the Department is seeking to impose. If the license holder files a written protest, the Department issues

a Determination, which the license holder can appeal by seeking a contested case hearing at the ALC.

The administrative law judge acts as the finder of facts in a *de novo* proceeding. It is important to underscore the difference between a trial *de novo* and a *de novo* review. In a trial *de novo* the court is permitted to receive testimony and evidence in addition to what was presented in an earlier hearing. See, e.g., Bailey v. S.C. Dep't of Health, 388 S.C. 1, 4, 693 S.E.2d 426, 428 (Ct. App. 2010) (citing S.C. Code Ann. § 1-23-600(A) (Supp. 2009)) ("The ALC presides over all hearings of contested DHEC permitting cases and, in such cases, serves as the fact-finder and is not restricted by the findings of the administrative agency."). Conversely, in a *de novo* review, the appellate court's "review of the administrative law judge's order must be confined to the record." Id. ("The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact."); see also 5 C.J.S. Appeal and Error § 907. The hearings conducted by the ALC concerning alcohol licensing and enforcement are considered to be a trial *de novo*. "In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the *de novo* contested case proceeding." S.C. Dep't of Revenue v. Sandalwood Soc. Club, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012); see also Be Mi, Inc. v. S.C. Dep't of Revenue, 408 S.C. 290, 758 S.E.2d 737 (Ct. App. 2014) (in reaching decisions in contested violation matters the ALC serves as the sole finder of fact in a *de novo* contested case proceeding); Marlboro Park Hosp. v. S.C. Dep't of Health & Env't Control, 358 S.C. 573, 595 S.E.2d 851, 854 (Ct. App. 2004).

b. In a *de novo* hearing the ALC is not restricted to a review of the initial finding by an administrative agency.

In its brief, Study Hall contends the sole issue before the ALC was the moral character of Starkey, and therefore the imposition of the suspension on the license exceeded the ALC's

statutory authority. However, when reviewing an administrative agency's final determination, the ALC is not restricted to the issues in the agency's determination. "In the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing." Reliance Ins. Co. v. Smith, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). "The ALC . . . serves as the fact finder and is not restricted by the findings of the administrative agency." Bailey, 388 S.C. 1, 4, 693 S.E.2d 426, 428. This allows the ALC to consider additional evidence and conduct independent fact finding on issues presented before the court. Furthermore, in a contested case, "the ALJ stands in the discretionary shoes of the agency holding a *de novo* bench trial." S.C. Dep't of Health & Env't Control, Petitioner, No. 15-ALJ-07-0554-CC, 2016 WL 5867852 (Oct. 3, 2016). By standing in the shoes of the Department, the ALC is "authorized to establish conditions or restrictions which [the court] considers necessary before issuing or renewing a license or permit." S.C. Code Ann. § 61-2-80 (2009).

c. The ALC has the authority to establish conditions or restrictions that it considers necessary.

Section 61-2-80 provides that "The State, through the Department . . . is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit." Those restrictions or conditions must be complied with during the life of the license or permit. Feldman, 203 S.C. 49, 26 S.E.2d 22, 25 (1943). These powers extend to the ALC in a contested case hearing. "If the judge stands fully in the shoes of the Department, then he, like the Department is 'authorized to establish conditions or restrictions which [he] considers necessary before issuing or renewing a license or permit.'" John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina at 189 (2007). As the fact finder in a *de novo* proceeding the ALC has the discretion and authority to place conditions on a

license or permit that it considers necessary. While the ALC did not find that the unlicensed sale of alcohol warranted the ultimate determination that Starkey lacked the requisite moral character to sell alcohol, the ALC did find the unlicensed sale of alcohol warranted a penalty. Thus, requiring a 90-day suspension as a condition of the license and permit was within the authority of the ALC.

d. The ALC has the broad discretion in determining sanctions to be imposed upon an alcoholic beverage permit or license in a violation matter.

The Department has the authority to determine the appropriate administrative penalty for a violation when a licensee violates the statutes or regulations that govern the sale of alcohol. "[T]he department may, in its discretion, impose a monetary penalty upon the holder of a beer or wine license in lieu of suspension or revocation." S.C. Code Ann. § 61-4-250. "[T]he department may revoke the permit of a person failing to comply with any requirements hereof." S.C. Code Ann. § 61-4-270. If the penalty imposed by the Department is challenged in a contested case hearing the ALC becomes the fact-finder of the *de novo* proceeding. As the fact-finder, the ALC will determine if the violation occurred and impose an appropriate penalty based upon the facts presented. This penalty will be upheld so long as the ALC does not exceed its statutory authority. Walker v. S.C. Alcoholic Beverage Control Com'n, 305 S.C. 209, 407 S.E. 2d 633 (1991).

Here, Starkey admitted that Study Hall was selling beer, wine and liquor without a license. (App. 329). The sale of beer and wine without a permit is a violation S.C. Code Ann. § 61-4-560. Additionally, the sale of alcoholic liquors without a license violates S.C. Code Ann. § 61-6-4010. As there was no dispute as to whether the violations occurred the ALC determined it to be an appropriate penalty for the undisputed violations to condition the granting of the renewal permit on a preliminary suspension equivalent to the number of days Study Hall admittedly sold alcohol without a license. Imposing this condition for admitted illegal alcohol sales is well within the statutory authority of the ALC.

e. The holding in *Sandalwood* is distinguishable from this case.

In its brief, Study Hall contends this case is the first since S.C. Dep't of Revenue v. Sandalwood Soc. Club, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012) to address the limits of the ALC's statutory authority to impose penalties. See Petitioner's Br. at 11–12. Study Hall urges this Court to "follow the path in Sandalwood and remind the ALC that its power does not extend into equity." Id. This case is distinguishable from Sandalwood, both in its facts and relevant legal analysis.

In Sandalwood, the Court of Appeals found that the ALC abused its discretion and committed an error of law when it penalized the licensee for violations that were not cited by the Department of Revenue. Based upon the testimony of an intervenor, the ALC imposed a more severe penalty than was requested by the Department. The Court of Appeals reversed the ALC finding that "what amounted to a private citizen bringing a claim under DOR's regulatory scheme was an error of law. Because this error formed part of the basis for a more severe penalty, we reverse the ALC's decision." Sandalwood, 399 S.C. at 281, 731 S.E.2d at 337. In other words, the error in Sandalwood was that the ALC effectively permitted a private citizen to bring an enforcement action against the holder of an alcohol license, even though the statutory authority to administer and enforce alcohol licenses lies solely with the Department in conjunction with SLED.

This case is distinctive from Sandalwood in that the 90-day suspension was not based upon claims brought by an intervenor; rather, the Department sought to cancel the license and the ALC chose to impose a lesser penalty—suspension—based on testimony and evidence presented by witnesses including SLED and the Department, the two agencies that are charged with administering and enforcing Title 61. See S.C. Code Ann. § 61-2-20 (2009). That evidence included, among other things:

- The State of Georgia had previously attempted to revoke Starkey's prior alcohol license in Statesboro (R.p.287, line 20 -23).

- Starkey had not filed South Carolina income tax returns for four years (2014 through 2017) (R.p.286, line 23-p.287, line 17).

- Study Hall had illegally sold beer, wine, and alcohol ***for over three months*** after his permit and license had expired on November 30, 2018, despite having received a notice from the Department on December 7, 2018, instructing Study Hall **"You MUST cease all sales of beer, wine and/or liquor until you receive your renewed license."** (R.p.283, line 2-5).

- Study Hall's local option permit had expired on November 26, 2017, but Study Hall continued to make illegal beer, wine, and alcohol sales on Sundays for 95 weeks until it was caught by SLED in October 2019 (R.p.285, line 4-12). By failing to obtain a validly issued local option permit, Study Hall had avoided paying the State approximately $18,000 in local option permit fees (R.p.286, line 13-14).

- SLED arrested Starkey and seized contraband alcohol from Study Hall's premises on February 29, 2019 (R.p.194, line 1-7).

All of this testimony was presented in support of the Department's request—rather than the request of a private citizen or intervenor—that the alcohol licenses be cancelled/not renewed.

Another distinction between the present case and Sandalwood is that the ALC in Sandalwood imposed a harsher penalty than was requested from the Department of Revenue. Here, the 90-day suspension imposed by the ALC as a condition for licensure is a less severe penalty than the cancelation of Study Hall's permit and license. Because the facts and procedural posture of this case are dissimilar the holding in Sandalwood does not support a reversal of the ALC in this appeal.

CONCLUSION

The ALC's decision to condition the renewal of Study Hall's alcohol licenses upon a 90-day suspension, as a penalty for Study Hall's admitted violations of selling alcohol without a license, was well within its statutory authority and was not an abuse of discretion. Moreover, by choosing to impose a penalty rather than cancel Study Hall's alcohol licenses permanently, the

ALC did not violate Study Hall's constitutional rights, and Study Hall never raised a constitutional challenge before the ALC or Court of Appeals and cannot raise it here. For the reasons stated above, the Department respectfully requests this Court affirm the Court of Appeals' decision and uphold the ALC's imposition of a 90-day suspension of Study Hall's license and permit.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the South Carolina Department of Revenue's Final Brief of the Respondent complies with Rule 211(b), SCACR.

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