

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KNS Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendant.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

ORDER DENYING AMENDED APPEAL
OF KNS FOUNDATION, LLC d/b/a
ELITE

FILED
13 SEP 30 AM 11:08
CLERK OF COURT
HARRIS-WARD
COUNTY

Presiding Judge: The Honorable William H. Seals, Jr.

Hearing Date/Time: September 17, 2013 at 2:00 p.m.

ORDER

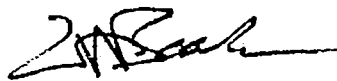
KNS Foundation, LLC, d/b/a Elite (Elite) has appealed from the decision of the Myrtle Beach City Council to revoke Elite's business licenses # 26941, # 26942, and #26943. In a hearing on the merits held before City Council on July 9, 2013, City Council decided Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications.

A hearing before this Court was held on Elite's appeal on September 17, 2013. Elite and its attorneys, Howell Bellamy, III, and Howell Bellamy, Jr., together with the City's attorney, Michael W. Battle, were present and presented oral arguments to the Court. After reviewing the record on appeal and considering standard of review for such appeals, I find that the decision of the Myrtle Beach City Council should be affirmed on the grounds that there is evidence in the record to support City Councils' decision.

The S.C. Appellate Courts have held that where the city council of a municipality has made a finding after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Gay v. City of Beaufort* 364 S.C. 252, 612 S.E.2d 467 (S.C.App.,2005); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). A decision of City Council will not be disturbed if there is evidence in the record to support its decision. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct.App.1994). A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952).

The record on appeal in the present case contains sufficient evidence to support the finding of City Council that Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license applications. The Court finds that City Council's decision was not arbitrary, unreasonable, or an obvious abuse of its discretion and therefore City Council's order is hereby affirmed.

AND IT IS SO ORDERED.



The Hon. William H. Scals, Jr.
Resident Judge, Fifteenth Judicial Circuit

September 23, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

K & S Foundation, LLC, d/b/a Elite,

Plaintiff,

vs.

City of Myrtle Beach,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-04103

CERTIFICATE OF SERVICE

I, Sherri Benninga, Paralegal for Battle & Vaught, P.A., hereby certify that I have this September 30, 2013 have served a copy of *the Order Denying Amended Appeal of KNS Foundation, LLC d/b/a Elite* upon all counsel of record in this action, by depositing the same in the United States mail, first-class postage pre-paid, to the following address(es):

Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578



Sherri Benninga Paralegal
to Michael W. Battle
BATTLE LAW FIRM, LLC
1200 Main Street
PO Box 530
Conway, SC 29528

September 30, 2013

BATTLE LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
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NSV 12 2013

MICHAEL W. BATTLE
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JAMES R. BATTLE, II
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M. KIRK BATTLE
E-Mail Address: kbattle@battlevaught.com

November 8, 2013

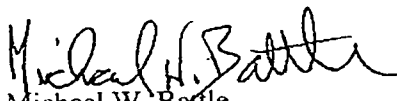
Howell V. Bellamy, III
Bellamy Law Firm
PO Box 357
Myrtle Beach, SC 29578

RE: K & S Foundation, LLC d/b/a Elite
C/A No.: 2013-CP-26-04103

Dear Howell:

Enclosed and served upon you by mail please find a clocked copy of the Order Denying Plaintiff's Motion to Reconsider, together with a certificate of service in connection with the above matter.

Sincerely,


Michael W. Battle
Enclosure: stated.

c. Tom Ellenburg