

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

73444

Case No. 2013-CP-26-5009

K N S Foundation, LLC d/b/a Elite Appellant

v.

City of Myrtle Beach Respondent

APPELLANT'S
MOTION TO VACATE
AND
MOTION TO REMAND

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SC Court of Appeals

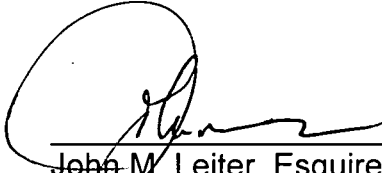
Counsel for the Appellant hereby respectfully moves this Court to vacate the decision Order Denying Appellant's Appeal of KNS Foundation, LLC, d/b/a Elite ("the Order") dated September 23, 2013 and filed on September 30, 2013 (a copy of which is attached hereto as Exhibit A and incorporated herein by reference), on the grounds that the Circuit Court did not have the original record, certified by the clerk of the City Council of Myrtle Beach before it when it rendered its decision in the matter denying the Appellant's appeal.

This Motion is based on the fact that Myrtle Beach did not provide the circuit court with an original record, certified by the Clerk of the Town of Myrtle Beach, all as is required by Rule 75, SCRPC. The Circuit Court, therefore, did not have the certified original record before it when it rendered the Order, which is the subject of this instant appeal.

The Appellants also move to have this instant appeal remanded to the circuit court for a decision based on the complete certified original record.

This Motion is based on the Order, Myrtle Beach's Response to Appeal dated July 26, 2013 (attached hereto as Exhibit B and incorporated herein by reference) and the Affidavit of Melanie Huggins-Ward dated and filed June 25, 2014 (attached hereto as Exhibit C and incorporated herein by reference), and the accompanying Memorandum in Opposition to Respondent's Motion to Supplement the Record on Appeal and in Support of this Motion to Vacate and Motion to Remand.

Respectfully submitted,



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September 2, 2014

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-26-04103ORDER DENYING AMENDED APPEAL
OF KNS FOUNDATION, LLC d/b/a
ELITE

1 SEP 30 AM 11:08
CLERK OF COURT
HARRIS-CARD
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.

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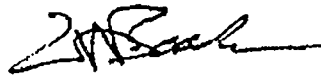
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SC Court of Appeals

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).

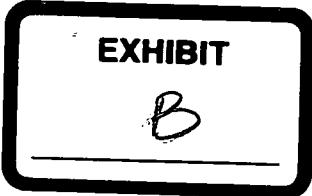
The record on appeal in the present case contains sufficient evidence to support the finding of City Council that Elite's business licenses should be revoked because those business licenses were obtained by Elite through a fraud, misrepresentation, a false or misleading statement, evasion or suppression 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,
Petitioner,
vs.
City of Myrtle Beach,
Respondent.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-26-05009

**CITY OF MYRTLE BEACH'S
RESPONSE TO APPEAL**

Respondent City of Myrtle Beach, responding to the Appeal of Petitioner would respectfully show unto this Honorable Court:

PARTIES AND JURISDICTION

1. Respondent is informed and believes the proper name for Petitioner is KNS Foundation, LLC, and Petitioner operates a night club under the guise of a drinking place, eating place, and pool hall/arcade at 641 Grissom Parkway, in the City of Myrtle Beach, South Carolina.
2. Respondent admits the allegations in paragraphs 2 – 3.
3. Respondent denies the allegations in paragraph 4.
4. Responding to the allegations in paragraph 5, Respondent is informed and believes the appeal in the above captioned matter is governed by Rule 74, SCRCF and Venue is proper in Horry County.

FACTUAL AND PROCEDURAL HISTORY

5. Respondent denies each and every allegation in paragraphs 6 – 30 and Respondent would further show that a correct factual and procedural history is stated in Respondent's Order for Suspension of Business Licenses and attached to Petitioner's Appeal as Exhibit D.

6. Each and every allegation of the Appeal not herein expressly admitted is hereby denied.

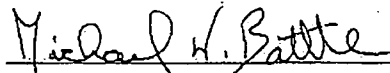
OBJECTION TO EXHIBITS

7. Respondent objects to the exhibits attached to Petitioner's Appeal except for the copy of the order of City Council. The record for the appeal will be provided by the Clerk of the City of Myrtle Beach pursuant to the South Carolina Rules of Civil Procedure governing appeals to circuit court.

CONCLUSION

Respondent respectfully requests that the Circuit Court dismiss the appeal and affirm the decision of the Respondent City of Myrtle Beach to revoke Petitioner's business license.

BATTLE & VAUGHT, PA.

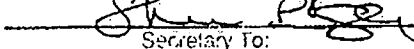


Michael W. Battle
Attorney for Respondent City of Myrtle Beach
P.O. Box 530
Conway, SC 29528
(843) 248-4321

July 26, 2013

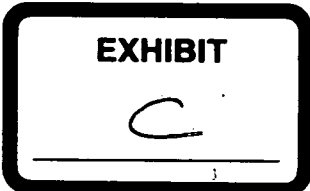
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 26th day of July, 2013



Secretary To:
Battle & Vaught, P.A.
P.O. Box 530

Conway, SC 29528
Attorney's for City of MS



STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 KNS Foundation, LLC, d/b/a Elite)
)
 Appellant,)
)
 v.)
)
 The City of Myrtle Beach,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2013-CP-26-5009

AFFIDAVIT OF MELANIE
 HUGGINS-WARD CLERK OF COURT
 FOR HORRY COUNTY

FILED
 HORRY COUNTY
 2014 JUN 25 PM 1:12
 MELANIE HUGGINS-WARD
 CLERK OF COURT

Personally appeared before me the undersigned, who being duly sworn under oath, deposes and says:

1. My name is Melanie Huggins Ward. I am over the age of 18 and I have personal knowledge of the facts herein.
2. I am the Clerk of Court for the Horry County's Clerk of Court. I have been employed in this position from January 2, 2005 to the present date.
3. My duties consist of filing of civil and family court documents, and custodian of civil, criminal, and family court documents.
4. On July 19, 2013, Appellant filed an appeal with the Court of Common Pleas challenging Myrtle Beach City Council's Order of Suspension revoking its three business licenses, pursuant Rule 74 SCRCP. (See Exhibit A).
5. On July 26, 2013, the Respondent City of Myrtle Beach filed an answer under Civil Action No. 2013-CP-26-5009 requesting that the circuit court dismiss Appellant's Appeal, and

affirm its decision to revoke Appellant's KNS's three business licenses. (See Exhibit B).

6. I have been asked to determine whether a record of the proceedings before the Myrtle Beach City Council was filed in this case with the Horry County Clerk of Court. The transcript was filed under 2013-CP-26- 04103 on September 18, 2013 and it should have been filed under 2013-CP-26-5009. The file in this matter, which this office maintains, does not contain nor does this office have any record that the original record of the revocation hearing held on June 25, 2013, including exhibits, was filed with the Horry County Clerk of Court's office in this matter.

7. I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

Further the affiant sayeth not.

Melanie Huggins-Ward
Melanie Huggins Ward, Clerk of
Court of Horry County

Date: June ²⁵~~24~~, 2014

SWORN AND SUBSCRIBED before
me this ²⁵ day of June, 2014.

[Signature]
Notary Public

State of South Carolina

My Commission Expires:

May 1, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Trial Court Case No.: 2013-CP-26-04103

Appellate Case No. 2013-002793

K N S Foundation, LLC d/b/a Elite Appellant

v.

City of Myrtle Beach Respondent

PROOF OF SERVICE

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I certify that I have served a copy of the Appellants' MOTION TO VACATE AND MOTION TO REMAND and MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD ON APPEAL AND IN SUPPORT OF APPELLANT'S MOTION TO VACATE AND TO REMAND by depositing a copy of it in the U.S. Mail on September 2, 2014, addressed to the attorneys of record:

Michael W. Battle, Esq.
Battle & Vaught, PA
900 Main Street, Suite C
Conway SC 29526

Howell V. Bellamy, Esquire
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Attorney for Appellant KNS Foundation, LLC

September 2, 2014

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TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

September 2, 2014

Honorable Jenny Abbott Kitchings
Clerk of the Court
South Carolina Court of Appeals
Post Office Box 116929
Columbia, South Carolina 29211

Re: *KNS Foundation, LLC d/b/a Elite v City of Myrtle Beach*
Case No.: 2013-CP-26-2009
Appellate Case No. 2014-002793

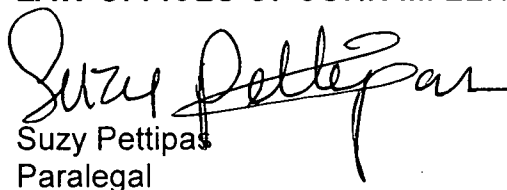
Dear Ms. Kitchings:

Please find enclosed the original and one copy of the **Appellant's Motion to Vacate and Motion to Remand, Memorandum in Opposition to Respondent's Motion to Supplement the Record on Appeal and In Support of Appellant's Motion to Vacate and to Remand**, together with my **Proof of Service**, to be filed in the above-referenced case. I would appreciate your returning a clocked copy to me in the enclosed, self-addressed, stamped envelope.

Thank you for your assistance with this matter.

Sincerely,

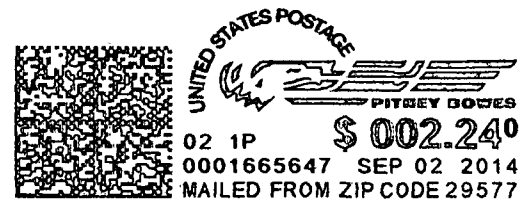
LAW OFFICES OF JOHN M. LEITER, PA


Suzy Pettipas
Paralegal

/smp
Enclosures

CC: Howell V. Bellamy, III, Esq.
Armand G. Derfner, Esq.
Michael Warner Battle, Esq.

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SC Court of Appeals

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ATTORNEYS AND COUNSELORS AT LAW

1203 48TH AVE. N. SUITE 109

MYRTLE BEACH, SC 29577

To: 

Honorable Jenny Abbott Kitchings

Clerk of the Court

South Carolina Court of Appeals

Post Office Box 116929

Columbia, South Carolina 29211