

2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

APR 07 2015

SC Court of Appeals

Kan Enterprises, Inc., d/b/a A 1 Food Stores,

Petitioner,

v.

South Carolina Department of Revenue,
Ellen Fishburne Triplett, Keith McIver,
Samuel L. Munson, Jocelyn Munson, and
Michael Hill,

Respondent.

Docket No. 14-ALJ-17-0571-CC

FINAL ORDER AND DECISION

APPEARANCES:

For Petitioner: Kenneth E. Allen, Esq.
For Respondent Department of Revenue: Justine M. Tate, Esq.
For Remaining Respondents:¹ Kathleen McDaniel, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. §§ 61-2-90, -100(A), -260 (2009); 61-4-520, -525 (2009); and S.C. Code Ann. §§ 1-23-310 et seq. (Supp. 2014) for a contested case hearing. Petitioner Kan Enterprises, Inc., d/b/a A 1 Food Stores (Petitioner or Store) is seeking renewal of its seven-day off-premises beer-and-wine permit.

On July 31, 2014, Petitioner filed an application with Respondent South Carolina Department of Revenue (Department) for renewal of its seven-day off-premises beer-and-wine permit for A 1 Food Stores, located at 4101 Monticello Road, Columbia, South Carolina 29203. However, on December 10, 2014, the Department denied Petitioner's application based upon a timely filed public protest. The Court held a hearing on February 10, 2015, at the offices of the ALC in Columbia, South Carolina.

¹ Motions for Leave to Intervene were filed by the above-captioned Respondents (excluding the Department of Revenue) on January 22, 2015. On February 3, 2015, the Court granted these Motions to Intervene, and the Intervenor became Respondents in this case. However, for the sake of clarity, "Respondents" will henceforth refer to only the Intervenor and will not include the Department of Revenue.

EXHIBIT
A

FILED

February 20, 2015

SC ADMIN. LAW COURT

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of proof upon the parties, I make the following Findings of Fact by a preponderance of the evidence:

General Findings

Petitioner is seeking renewal of its seven-day off-premises beer-and-wine permit for A 1 Food Stores, located at 4101 Monticello Road, Columbia, South Carolina 29203. The Department received a timely filed protest to Petitioner's application. But for that protest, the Department would have granted the permit renewal.

Petitioner is headquartered in Atlanta, Georgia and is 100% owned by Hadiya Ahibhai, a resident of Atlanta Georgia. However, Petitioner, which has been licensed to sell beer and wine in South Carolina for at least the last two years, has a registered agent located in Columbia, South Carolina, and has a principal residing in South Carolina - the manager of the Store, Vinoo Sehgal. Mr. Sehgal has been the manager at the Store since November 2012. He has approximately seven years of experience managing this type of business, and he has never had a permit revoked. Mr. Sehgal lives approximately three miles from the Store and spends approximately six to eight hours a day at the Store. There are no other managers at the Store.

Suitability of the Proposed Location

The Store operates from 5:00 a.m. to 2:00 a.m. on Sunday through Thursday, and twenty-four hours on Friday and Saturday. It is located in the Hyatt Park/Keenan Terrace neighborhood in the Eau Claire community of Columbia, South Carolina. The Store is adjacent to a residential care facility for "vulnerable adults," who are mentally ill and most of whom need supervision.

The Store has caused several problems for the community and law enforcement. At the outset, the Store has a lot of foot traffic, which has resulted in issues with loitering. To address the problems with loitering, Petitioner has posted, on either side of the exterior of the Store, a sign providing notice that the property is under surveillance and prohibiting panhandling, public drunkenness, narcotics, and loitering.² Petitioner's security personnel also frequently "runs off" those who are panhandling and loitering. Nevertheless, neighbors and law enforcement witness problems with vagrancy and loitering. Moreover, vagrants and loiterers who do leave the Store,

² Actually, the sign prohibits panhandling "sales."

often proceed from there to an "alley" (the driveway of a daycare) adjacent to residential care facility where they engage in solicitation, "using the bathroom," and sexual acts. Loitering has also been a problem at the post office located across Duke Street from the Store.

Numerous law enforcement problems have also emanated from the location. There have been 324 problems at the Store in 2014 (335 in the year before that), including civil disturbances, intoxicated pedestrians, and suspicious persons, all of which required "calls for service" – calls to 911 for which police are dispatched. A law enforcement officer was injured at the Store during a fight that occurred while making an arrest. In short, the Store has been an undue burden on law enforcement.

Petitioner asserts that it is trying to clean up the business. Petitioner has sought to discourage criminal activity, loitering, or drinking in the store or parking lot. To that end, Petitioner has hired a security guard who contacts law enforcement when there is a problem at the location. An inordinately large portion of Petitioner's store is devoted to the sale of cigarettes and beer, especially in individual cans, which according to law enforcement, promotes panhandling. Adding to this concern, the Store appears to have once had windows, which are now opaque, and the only view to the inside of the Store is through the two glass front doors, both of which are almost entirely covered with large beer signs. This seedy appearance, which stands in contrast to that of the nearby Hess and Sunoco stores, further attracts those who are apt to loiter in the area. Therefore, while some of the above incidents may have been beyond Petitioner's control, Petitioner has created an environment at the Store that attracts the kind of element that has caused the undue burden on law enforcement.

In contrast, the nearby Sunoco station, which is located approximately two blocks away, had posed an undue burden to law enforcement while it was operated under different management. But when Sunoco began operating the location, the management made improvements after a safety meeting with law enforcement which dramatically improved the problems at the location. However, Petitioner has made no such improvements

Mr. Sehgal testified that he tells his employees to check the identification of customers seeking to purchase alcohol or tobacco. However, Petitioner does not provide any formal training for the sale of alcohol and tobacco to minors, even though Petitioner has also had a South Carolina Law Enforcement Division (SLED) alcohol violation for sale of alcohol to a

minor. Indeed, as a result of that violation, Petitioner simply warned the employee who sold alcohol to the minor but did not punish him.

Moreover, the community around the Store has made efforts to improve the area such that the Store's condition has now become a detriment to the community by stymieing those efforts. For instance, littering occurs quite regularly and frequently at the Store's property and in the surrounding neighborhood. A significant portion of the litter in the surrounding neighborhood emanates from Petitioner's patrons. Indeed, the fact that Petitioner has to clean up litter on its property so often (three times a day) is a reflection of the litter problem that the Store spawns.

For the above reasons, I find that the Store poses an undue burden on law enforcement and a detriment to the surrounding community. Therefore, I conclude that Petitioner's application for its seven-day off-premises beer-and-wine permit should be denied.

CONCLUSIONS OF LAW

S.C. Code Ann. §§ 61-4-520 and -540 (2009) generally set forth the requirements for the issuance of a beer-and-wine permit. Section 61-4-520(5) provides that the location of the proposed place of business must be a proper one.

Although "proper location" is not statutorily defined, the ALC is vested, as the trier of fact, with the authority to determine the fitness or suitability of a particular location. *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981). The determination of a "proper location" is not necessarily a function solely of geography. *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984). Rather, in making that determination, the ALC "may consider any evidence adverse to the location." *Kearney v. Allen*, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985). It involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the community within which it is to be located. *Id.* at 327; 338 S.E.2d at 337. It is also relevant to consider whether the proposed location has been previously approved for a permit or license and whether its suitability has altered over time. *See Smith v. Pratt*, 258 S.C. 504, 508, 189 S.E.2d 301, 302 (1972); *Taylor v. Lewis*, 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973); *Byers v. S.C. Alcoholic Beverage Control Comm'n*, 281 S.C. 566, 569, 316 S.E.2d 705, 707 (1984).

"A liquor license or permit may also be properly refused on the ground that the location of the establishment would adversely affect the public interest, that the nature of the

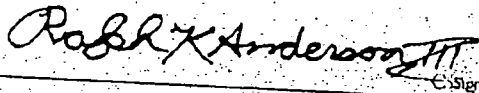
neighborhood and of the premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or that the manner of conducting the establishment would not be conducive to the general welfare of the community." 48 C.J.S. *Intoxicating Liquors* § 121 at 501 (1981). Nevertheless, without sufficient evidence of an adverse impact on the community, the application must not be denied if the statutory criteria are satisfied. The fact that a Protestant objects to the issuance of a permit is not a sufficient reason by itself to deny the application. See 45 Am. Jur. 2d *Intoxicating Liquors* §162 (Supp. 1995); 48 C.J.S. *Intoxicating Liquors* §119 (1981). Furthermore, in considering the suitability of a location, it is relevant to consider whether the testimony in opposition to the granting of a license is based on opinions, generalities, and conclusions, or whether the case is supported by facts. See *Smith*, 258 S.C. at 508, 189 S.E.2d at 302; *Taylor*, 261 S.C. at 171, 198 S.E.2d at 802.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Petitioner's application for a seven-day off-premises beer-and-wine permit is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

February 20, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

February 20, 2015
Columbia, South Carolina