

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2015-000733

Kan Enterprises, Inc., d/b/a A1 Food Stores.....Appellant,

v.

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT APPLY THE INCORRECT STANDARD IN ITS ORDER DENYING APPELLANT'S RENEWAL OF ITS OFF PREMISES BEER AND WINE PERMIT?
- II. IS THE TRIAL COURT'S ORDER SUPPORTED BY THE EVIDENCE PRESENTED AT THE FEBRUARY 10, 2015 HEARING?
- III. DID THE TRIAL COURT'S ORDER RELY ON UNSUBSTANTIATED OPINION TESTIMONY/EVIDENCE?
- IV. DOES THE TRIAL COURT'S ORDER DEPRIVE APPELLANT OF A VESTED INTEREST UNDER SOUTH CAROLINA LAW?
- V. DOES THE TRIAL COURT'S ORDER VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS?
- VI. DOES THE TRIAL COURT'S ORDER VIOLATE APPELLANT'S EQUAL PROTECTION RIGHTS?

STATEMENT OF THE CASE

This matter came before the Court for a contested case hearing pursuant to Appellant Kan Enterprises, Inc., d/b/a A1 Food Stores' ("A1 Food Store") application for a renewal of its seven-day off premises beer and wine permit filed with the Respondent South Carolina Department of Revenue ("Department") on or about July 31, 2014. (Application; R. ____). The Department denied the Appellant's request on or about December 10, 2014. (Denial; R. ____). Appellant timely appealed this decision to the Administrative Law Court and a contested case hearing was held on February 10, 2015 (Transcript of Record dated February 10, 2014; R. ____).

At the hearing, the Department's attorney stipulated in open court that the Department determined that Appellant met all statutory requirements for the seven-day off premises beer and wine permit and would have granted the permit but for public protest. (Transcript of Record, p. 7, ll. 7-14; R. ____). Testimony was then heard by Judge Ralph King Anderson, III ("Judge Anderson"). On February 20, 2015, Judge Anderson issued his Order denying the Appellant's application for a seven-day renewal. (Order of February 20, 2015; R. ____).

Appellant timely moved for Reconsideration, for a stay and supersedeas, along with a memorandum of law in support of its motions. (Motion for Reconsideration, Stay and Supersedeas; Motion for Stay; Memorandum of Law; R. ____). In response to this motion, the Court issued two orders, an order denying Appellant's motions for reconsideration, for a stay and supersedeas, as well as an order amending its prior February 20, 2015, Order to include additional findings of fact. (Order dated March 19, 2015; R. ____). This appeal timely followed. (Notice of Appeal; R. ____).

STATEMENT OF THE FACTS

A1 Food Store is located on Monticello Road in Columbia, South Carolina. (Plaintiff's Exhibits 1-A through 1-L; R. ____). It is owned by Kan Enterprises. (Transcript of Record, p. 47, ll. 20-23; R. ____). It is located adjacent to a post office in a heavily trafficked part of Columbia. (Transcript of Record, p. 23, l. 25 – p. 24, l. 2; p. 30, ll. 1-10; R. ____). There is a City of Columbia Police substation located in close proximity. (Transcript of Record, p. 24, ll. 6-14; R. ____). Police officers from the substation frequent the business and utilize the business' parking lot. (Transcript of Record, p. 35, ll. 5-18; p. 36, l. 18 – p. 37, l. 6; R. ____). Across the street is an unrelated business, located at 4039 Monticello Road, which was recently granted an off premises beer and wine permit. (Transcript of Record, p. 24, ll. 15-18; R. ____).

A1 Food Store has held an off premises beer and wine permit for many years and for at least two years under its present ownership. (Transcript of Record, p. 18, l. 23 – p. 19, l. 1; R. ____). This license has never been revoked or suspended. (Transcript of Record p. 43, ll. 14-16; R. ____). Approximately 40 percent of A1 Food Store's business comes from the sale of beer and wine for off premises consumption. (Transcript of Record, p. 48, ll. 3-17; R. ____). In addition to beer and wine, A1 Food Store sells, "...almost everything from day-to-day daily basis...whatever people need. Like it could be Clorox with the detergent powder. It could be toilet paper. It could be automotive oil or soap, you know, the type of things that people need on a day to day basis." (Transcript of Record, p. 19, l. 20 – p. 20, l. 3; R. ____). In addition, the store sells frozen food. (Transcript of Record, p. 20, ll. 7-12; R. ____). It also sells lottery tickets and has an in-store ATM. (Transcript of Record, p. 33, ll. 5-10; R. ____).

A1 Food Store also sells beer and wine for off premises consumption. (Transcript of Record, p. 33, ll. 3-20; R. ____). In the store, food or drink consumption is not allowed. (Transcript of Record, p. 20, ll. 15-19; R. ____). A1 Food Store is open from 5:00 a.m. until 2:00 a.m. during weekdays and 24 hours a day during the weekends. (Transcript of Record, pp. 11-16; R. ____).

For the past two years, A1 Food Store has been managed by Vinno ("Vinny") Sehgal. (Transcript of Record, p. 13, ll. 11-12; p. 14, ll. 6-16; R. ____). Mr. Sehgal testified that he is physically present at the store 6-8 hours a day and is available by phone "24/7." (Transcript of Record, p. 40, l. 21 – p. 41; l. 9; R. ____). He testified that A1 Food Store maintains an interior and exterior security camera system with "eight or nine cameras." (Transcript of Record, p. 21, ll. 5-14; R. ____). These operate "24/7." (Transcript of Record, p. 43, ll. 17-24; R. ____). Monitor screens are located in Mr. Sehgal's office and at the counter. (Transcript of Record, p. 21, ll. 15-18; p. 22, ll. 13-19; R. ____). Images from these cameras are retained for 2-3 days. On occasion, images from the cameras have been furnished, on request, to the City of Columbia Police Department. (Transcript of Record, p. 49, l. 23 – p. 50, l. 11; R. ____).

In addition to the security system, the store employs a security guard during night-time hours. (Transcript of Record, p. 43, l. 17 – p. 44, l. 10; R. ____). This individual was hired after Mr. Sehgal took over management and is physically on the premises from at least 10:00 p.m. until closing each night. (Transcript of Record, p. 44, ll. 4-10; p. 75, ll. 17-25; p. 76, ll. 15-20; R. ____). The security guard's job is to monitor both the inside and outside premises. (Transcript of Record p. 76, ll. 3-10; R. ____).

Mr. Sehgal testified that individuals are not allowed to drink alcohol in the

building or parking lot. (Transcript of Record, p. 27, ll. 15-18; R. ____). Sales of alcohol are not made to intoxicated customers. (Transcript of Record, p. 38, l. 25 – p. 39, l. 9; R. ____). There are signs inside the store regarding underage drinking and employees received "on the job" training regarding sale of alcohol to underage drinkers. (Transcript of Record, p. 41, l. 10 – p. 43, l. 11; R. ____). There is a large sign posted on premises indicating that the property is under surveillance and that there is to be no on premises consumption of alcohol, no narcotics, no panhandling and no loitering. (Transcript of Record, p. 23, ll. 19-24; R. ____). At times "no trespassing" signs have been placed on the property as well. (Transcript of Record, p. 28, ll. 8-12; R. ____).

Two months prior to the hearing, Mr. Sehgal installed high intensity flood lights to illuminate all areas around the business. (Transcript of Record, p. 25, l. 18 – p. 26, l. 20; R. ____). Mr. Sehgal testified that neither he nor his employees confront individuals who disregard this sign, but instead call upon/rely upon the City of Columbia Police to do so. (Transcript of Record, p. 27, l. 19 – p. 28, l. 7; R. ____).

In addition, Mr. Sehgal testified that at least three times a day his employees check the parking lot and areas surrounding the store for litter. (Transcript of Record, p. 28, l. 24 – p. 29, l. 5; R. ____). A1 Food Store is located on a busy street and adjacent to numerous other stores and businesses. (Transcript of Record, p. 30, l. 18 – p. 31, l. 3; R. ____). Mr. Sehgal testified that he does not know where this litter comes from. (Transcript of Record, p. 29, ll. 6-25; R. ____). He testified that this litter could come from any of these 10-15 other businesses. (Transcript of Record, p. 29, l. 17 – p. 30, l. 10; R. ____). He testified that he did everything he could to keep the business neat and clean. (Transcript of Record, p. 39, l. 13 – p. 40, l. 6; R. ____). Appellant presented

testimony from several witnesses to the effect that the condition of the store had improved since Mr. Sehgal took over as manager. (Transcript of Record, p. 59, ll. 14-20; p. 73, l. 17 – p. 74, l. 3; p. 76, l. 22 – p. 78, l. 2; R. ____).

STANDARD OF REVIEW

A reviewing Court may reverse or modify the decision of the Administrative Law Court (ALC) judge if the finding, conclusion or decision reached by the ALC is arbitrary or capricious or characterized by an abuse of discretion or is a clearly unwarranted exercise of discretion; violates constitutional or statutory provisions; or is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or is affected by an error of law. S.C. Code § 1-23-610(B); *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 670 S.E.2d 674 (S.C. Ct. App. 2008).

DISCUSSION OF LAW

A. THE TRIAL COURT APPLIED THE INCORRECT STANDARD.

The Final Orders and Decisions of the Administrative Law Judge, as well as his Order denying Appellant's post-hearing motions, are based on a misinterpretation and misapplication of the applicable South Carolina Law. This matter was before the Court for a renewal of an existing license, not a first time application for a beer and wine permit. The Court erroneously treated this matter as a first time application and not as a renewal of a long time license.

Two cases of the South Carolina Appellate Courts are illuminating and applicable to the facts of the present case and demonstrate the Court's erroneous rationale and ruling in this case. In *Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973), respondent, the

holder of an existing off premises beer and wine permit, appealed the decision of the Commission denying a renewal on the grounds that its location was unsuitable for the sale of beer or wine.

The Supreme Court reversed the Commission's decision citing the fact that there, like here, the premises in question had operated with a permit for a lengthy period of time (the premises in question here has operated, upon information and belief, with a permit for approximately 20 years). The Court held that the real issue before the Court was not whether the respondent's premises were "suitable", but whether or not any conditions had changed since its last renewal. The *Taylor* Court reversed the denial on the grounds that "the record is devoid of any showing that the location is any less suitable for the sale of beer now than during the prior five (5) year period." 261 S.C at 802; 198 S.E.2d at 172.

Similarly, in the case of *Byers v. South Carolina Alcoholic Beverage Control Commission*, 281 S.C. 566, 316 S.E.2d 705 (1984), the South Carolina Court of Appeals affirmed the Circuit Court's reversal of the Commission's determination that respondent's business was unsuitable for a permit to sell wine and beer. In its decision denying Respondent's permit request, the Commission had cited such factors as, "... (2) at least ten incidents at the club were reported to police in the seven month period preceding the hearing; (3) crime in the area is increasing; (4) traffic in the area is heavy; and (5) the permits for some other locations in the area had not been renewed."

The Court held that these facts were insufficient to deny respondent's renewal and affirmed the lower court's order reversing the Commission's adverse determination. The Court held:

The evidence...reveals that the Hayloft is located in a commercial area. It has operated under a permit to sell wine and beer for over

twenty years. Its present owner was issued a permit without protest just seven months prior to the hearing on the respondent's application. Several other establishments in the area sell beer and wine. There was no evidence that the crime rate or traffic in the area had increased since the permit was issued for the Hayloft seven months previously.

Again, the Court, citing the *Taylor v. Lewis* case specifically, recognized that, "the record is devoid of any showing that the location is less suitable for the sale of beer now than during the prior (twenty) year period."

The Appellant submits that these cases are controlling to this case. Like the applicants in these two cases, the Appellant has held an off premises beer and wine permit for a lengthy period of time. There has been a permit in place at the business for approximately twenty (20) years. Renewals have been consistently granted without protest. Contrary to the evidence presented by the Intervenor and relied on by the Court, evidence presented before the Court in this case did not establish that the area around the Appellant's business has changed significantly since the last renewal. While Respondents presented evidence as to the present status of the neighborhood and perceived problems in the neighborhood pertaining to litter, crime and loitering, There was no evidence that any of these issues had increased significantly since the last renewal of Appellant's license. Like *Taylor* and *Lewis*, the evidence presented to the Court that did not establish that Appellant's location is any less suitable for the sale of beer now than during the period of time that it had held a license and during the period of time since its last renewal. The Trial Court misconstrued and misapplied existing South Carolina law and applied the incorrect standard in this case and its Order denying Appellant's license should be reversed by this Court.

B. THE TRIAL COURT'S ORDER IS NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL.

Even if the Trial Judge applied the correct standard in this case (which Appellant denies) the overwhelming evidence in this case does not support a denial of the renewal of Appellant's off premises beer and wine permit. In support of his decision, Judge Anderson cited and relied upon two factors - one instance in which the Appellant's business was cited for selling beer to a minor and the fact that the number of calls for law enforcement service to Appellant's store had increased from 209 calls in 2012 to 252 calls in 2014. (Order of Judge Anderson, dated March 19, 2015; R. ____).

Mr. Sehgal admitted to the incident where an employee, "Raoul", "made a mistake" and sold alcohol to a minor. (Transcript of Record, p. 53, l. 22 - p. 54, l. 11; R. ____). Mr. Sehgal testified that this was a "mistake" and the store paid a fine. (Transcript of Record, p. 35, l. 25 - p. 36, l. 17; R. ____). "Raoul" (who is still employed at the store today) admitted he made a mistake and was given a verbal warning. (Transcript of Record, p. 53, ll. 22 - p. 54, l. 11; R. ____). There have been no other instances of violations.*

The Court erroneously stated that Appellant "did nothing" about this incident and that this failure supported the non-renewal of it's license. This finding totally ignores the evidence presented at trial. Further, by making this judgment, the Court substitutes its own business judgment for that of Mr. Sehgal. The Court's Order seems to imply that putting an employee out of work for one "mistake" would have been the correct course of action for Mr. Sehgal.

* Appellant offered testimony regarding steps the business took to prevent sales of alcohol to minors. (Transcript of Record, p. 41, ll. 19 - 25; R. ____).

The Court also cited the fact that calls to the police had increased. This finding ignored Mr. Sehgal's testimony that he instructed his employees to call law enforcement if they had a problem and not to take matters into their own hands. (Transcript of Record, p. 35, ll. 5-22; R. ____). The Court's Order, however, encourages businesses who want a permit to take matters into their own hands and not call the police when they have a problem.

The Trial Court's Order also ignores the greater weight of evidence presented by Appellant. Mr. Sehgal, who has managed A1 Food Store for the past two years, testified that he is physically at the store 6-8 hours a day and is available by phone "24/7." (Transcript of Record p. 40, l. 21 – p. 41, l. 9; R. ____). He testified that the business maintains an interior and exterior security camera system with "eight or nine cameras." (Transcript of Record, p. 21, ll. 5-14; R. ____). These operate "24/7." (Transcript of Record, p. 43, ll. 17-24; R. ____). Monitors are located in Mr. Sehgal's office and at the counter. (Transcript of Record, p. 21, ll. 15-18; p. 22, ll. 13-19; R. ____). Images from these cameras are retained for 2-3 days. On occasion, images from the cameras have been furnished, on request, to the City of Columbia Police Department. (Transcript of Record, p. 49, l. 23 - p. 50, l. 11; R. ____).

In addition to the security system, the store employs a security guard during the night-time hours. (Transcript of Record, p. 43, l. 18 - p. 44, l. 10; R. ____). This individual was hired after Mr. Sehgal took over management and is physically on the premises from at least 10:00 p.m. until closing each night to monitor both the interior and the exterior of the premises. (Transcript of Record, p. 44, ll. 4-10; p. 75, ll. 17-25; p. 76, ll. 3-10, 15-20; R. ____).

Mr. Sehgal testified that individuals are not allowed to drink alcohol in the building or parking lot. (Transcript of Record, p. 27, ll. 15-18; R. ____). Sales of alcohol are not made to intoxicated customers. (Transcript of Record, p. 38, l. 25 – p. 39, l. 9; R. ____). There are signs inside the store regarding underage drinking and employees received "on the job" training regarding sale of alcohol to underage drinkers. (Transcript of Record, p. 41, l. 10 – p. 43, l. 11; R. ____). There is a large sign posted on premises indicating that the property is under surveillance and that there is to be no on premises consumption of alcohol, no narcotics, no panhandling and no loitering. (Transcript of Record, p. 23, ll. 19-24; R. ____). At times "no trespassing" signs have been placed on the property as well. (Transcript of Record, p. 28, ll. 8-12; R. ____).

Two months ago, Mr. Sehgal installed high intensity flood lights to illuminate all areas around the business. (Transcript of Record, p. 25, l. 18 – p. 26, l. 20; R. ____). Mr. Sehgal testified that neither he nor his employees confront individuals who disregard the posted signs, but instead call upon the City of Columbia Police to do so. (Transcript of Record, p. 27, l. 19 – p. 28, l. 7; R. ____).

In addition Mr. Sehgal testified that at least three times a day his employees check the parking lot and areas surrounding the store for litter. (Transcript of Record, p. 28, l. 24 – p. 29, l. 5; R. ____). A1 Food Store is located on a busy street and adjacent to numerous other stores and businesses. (Transcript of Record, p. 30, ll. 18 – p. 31, l. 3; R. ____). Mr. Sehgal testified that he does not know where this litter comes from. (Transcript of Record, p. 29, ll. 6-25; R. ____). He testified that this litter could come from any of these 10-15 other businesses. (Transcript of Record, p. 29, l. 17 - p. 30, l. 10; R. ____). He testified that he did everything he could to keep the business neat and clean.

(Transcript of Record, p. 39, l. 13 – p. 40, l. 6; R. ____). Appellant presented testimony from several witnesses to the effect that the condition of the store had improved since Mr. Sehgal took over as manager. (Transcript of Record, p. 59, ll. 14-20; p. 73, l. 17 – p. 74, l. 3; p. 76, l. 22 – p. 78, l. 2; R. ____).

The Trial Court ignored this evidence in its Order. His findings that Appellant had made no effort to improve its business and had, in fact, stymied efforts to clean up the neighborhood are not supported by the evidence presented at trial and are tantamount to an abuse of discretion. (Order of Judge Anderson; R. ____). The Trial Court's Order denying the Appellant's permit is clearly erroneous and should be reversed by this Court.

C. THE COURT'S ORDER RELIED ON UNSUBSTANTIATED OPINION EVIDENCE.

Judge Anderson's Orders denying the Appellant's renewal erroneously rely on the opinions and conclusions of the Intervenor and their witnesses and lack a sufficient factual basis to deny Appellant's renewal. Judge Anderson noted that but for the protests of the intervenors and their witnesses, the renewal would have been granted. (Order dated February 20, 2015, p. 2; R. ____). This evidence formed an important part of the Order denying Appellant's renewal. However, the evidence presented by the Intervenor and their witnesses was not sufficient to deny Appellant's renewal and the Trial Court's Order should be reversed by this Court.

In his Order, the Trial Judge cited such issues as vagrancy, panhandling and loitering, not at the Appellant's business, but in an alley adjacent to it. According to the evidence cited in the Court's Order, individuals loitering in this alley (which is not part of Appellant's business or property) engage in solicitation, using the bathroom, and sexual

acts.

The Court heard opinion testimony from Intervenors and their numerous witnesses. These witnesses testified to a number of complaints about A1 Food Store regarding such things as its appearance, its signage, the condition of the building and parking lot, the fact A1 Food Store sells single beers, and the fact customers smoke inside the store.* The Intervenors attributed all this activity to the Appellant's business and license. However, the Court also cited two other businesses near Appellant's, a Hess and a Sunoco store, who also sell beer and wine for off-site consumption. The Court heard testimony, unrefuted at trial, that Respondent Department of Revenue recently granted an off-premises beer and wine sales license to a business located directly adjacent to the Appellant's. Any of these existing businesses could as easily contribute to and/or cause this loitering as the Appellant. Further, this activity could just as easily occur if there were no businesses in the area selling beer or wine. The only evidence directly linking these activities to the Appellant's business was the opinion testimony presented at the hearing by those opposed to the Appellant's renewal. The opinion testimony linking this problem solely to the Appellant's business is not sufficient to support an order denying its renewal. *Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973).

In addition, the Court cited the fact that Appellant's business has become a detriment to the community's effort to clean up the neighborhood. The Court's Order provided, "...for instance, littering occurs quite regularly and frequently at the Store's property and in the surrounding neighborhood." The Court then added, "A significant

*None of these factors should play any part in whether or not the Appellant's license is renewed. *Byers v. South Carolina Alcoholic Beverage Control Commission*, 281 S.C. 566, 316 S.E.2d 705 (1984).

portion of the litter in the surrounding neighborhood emanates from the Appellant's patrons." Again, this finding of fact is based solely on the speculations and opinions of those who showed up at the hearing to protest the renewal of the Appellant's license. There is no concrete evidence linking a systemic neighborhood wide loitering and litter problem to the Appellant's store. This biased and unsubstantiated evidence is simply insufficient to support the Order of the Court in this case.

Based upon a review of the record and the testimony of Intervenors and their witnesses, it appears that the Appellant's business has become a "scapegoat" for a wide variety of ills, much, if not most of which is completely outside of Appellant's control. As a result of speculative, opinion testimony linking these problems to the Appellant's business, it has lost its license. Its business is in jeopardy. The jobs of its employees and their source of income is at risk. These are serious consequences. The Court's Order should have been based on substantiated proof and not the opinions and conjecture of the witnesses put up at the contested case hearing by Respondent Intervenors.*

The Trial Court's Order cites, and ignores, evidence that supports a renewal of the Appellant's license. This evidence included:

1. Signs posted on the property to discourage loitering;
2. Employment of security officers who "run off" individuals on the property who "panhandle" and "loiter;"
3. Calls to 911 by security guards when situations arise on the premises; and
4. Addressing an incident where a minor was sold beer.

* The Trial Court's Order cites testimony from Councilman Sam Davis that a business decided not to invest in the neighborhood due to Appellant's business. However, Mr. Davis testified that this was due to neighborhood foot traffic. (Transcript of Record, p. 177, l. 25 – p. 180, l. 23; R. ____). Mr. Davis was not able to offer anything other than speculation that A1 Food Store had anything to do with this decision.

While the Court cited these steps, they did not factor into the Court's decision to revoke the Appellant's license. If anything the Court penalized the Appellant for taking these steps to improve his business. This Court should reverse the Trial Court's Order denying the Appellant's renewal.

D. THE TRIAL COURT'S ORDER IMPERMISSIBLY DEPRIVES THE APPELLANT OF A VESTED INTEREST UNDER SOUTH CAROLINA LAW.

The Appellant A1 Food Store has held its off-premises beer and wine license for approximately 20 years. During this time the sale of beer and wine has become an integral and vital part of the Appellant's business. (Transcript of Record, p. 48, ll. 3-13; R. ____). Each time that the Appellant's license has been up for renewal, proper legal standards as set forth under South Carolina Statutory and Case Law have been applied, and it has been renewed without difficulty, pursuant to well established and well settled law. In this instance, if not for the opposition raised by Intervenor, it would have been renewed again without protest. The Appellant has incurred substantial business expenses and continues to incur expenses and obligations in reliance on the proper and non arbitrary renewal of its license pursuant to the factors as set forth by South Carolina statutory and case law and in reliance of these factors (and laws) being properly applied.

The Court's Order in this case denies the Appellant's renewal by applying an arbitrary and capricious standard not in accordance to the well established South Carolina law regarding license renewal. Instead of following well established precedent, the Administrative Law Judge, as set forth above, applied an incorrect standard to deny the Appellant its license. This arbitrary standard has, and will, deprive the Appellant of his vested rights and expectations in having the well established South Carolina authority

applied to his renewal application.

The Court's action in this case is tantamount to depriving the Appellant of his vested property right without cause. *See, Pure Oil Division, et. al. v. The City of Columbia*, 254 S.C. 28, 173 S.E.2d 140 (1970). In reliance of well established South Carolina authority, Appellant had a right to expect its license would be renewed. However, the Court by misapplying and misconstruing South Carolina law regarding license renewal deprived Appellant of its right. The Court should reconsider and reverse its prior Order denying the Appellant's renewal.

E. THE TRIAL COURT'S ORDER VIOLATES THE APPELLANT'S CONSTITUTIONAL RIGHTS.

The Court's Order in this case denies the Appellant's renewal by applying an arbitrary and capricious standard for a permit renewal. The Court's Order violates the Appellant's constitutional rights. The Court disregarded well established legal principles and unexpectedly substituted its own test to the Appellant's renewal. At the time of the hearing before Judge Anderson and prior to the Court issuing its Order denying the Appellant's renewal, Appellant did not have any notice that the Court was going to disregard well established legal principles. Prior to receiving the Court's Order, Appellant did not know that the Court was going to treat his renewal case as a case for a first time application. Because it did not have this knowledge prior to receiving the Court's Orders, Appellant did not have an adequate opportunity to prepare evidence to rebut the opinion testimony presented at the trial. The Court erred in finding and ruling Appellant failed to raise these issues at trial because Appellant had no way of knowing that the Court would apply an incorrect standard until it received the Court's Order.

As set forth in the affidavit filed with the Court, the Court's Order of non renewal will deprive the Appellant of a substantial right, depriving it of a substantial part of its business and most probably resulting in the closure of the Appellant's business, putting those who work there out of work. (Affidavit of Vinno Sehgal; R. ____). All this will occur while other similarly situated businesses continue to sell beer and wine for off-premises consumption. (Transcript of Record, p. 24, l. 15 – p. 25, l. 8; R. ____).

This action of the Court deprives the Appellant of its constitutionally protected Due Process Rights under the Fourteenth Amendment of the United States Constitution. *See, LeChance v. Erickson*, 522 U.S. 262, 118 S. Ct. 753, 139 L. Ed. 695 (1998); *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (S.C. App. 2002); *Sabella v. South Carolina Alcoholic Beverages Control Commission*, 289 S.C. 400, 346 S.E.2d 530 (S.C. App. 1986). As set forth above, the Appellant presented more than sufficient evidence for a renewal of its off premises beer and wine permit under well established South Carolina law. In fact, but for the opposition of the Intervenor, the license would have been renewed. However, unknown to the Appellant prior to trial, the Court ignored this well settled law and applied its own tests or standards for renewal.

F. THE COURT'S ORDER VIOLATES THE APPELLANT'S EQUAL PROTECTION RIGHTS.

The Court's Order also singles out and discriminates against the Appellant's business. The Order recognizes at least two other businesses located near Appellant with off premises beer and wine licenses. In addition, Appellant is informed and believes a third similarly situated business, located adjacent to its business, was granted an off premises license within the past 6 months to a year. These businesses' operations are

untouched by the Court's Order and will continue the sale of beer and wine.

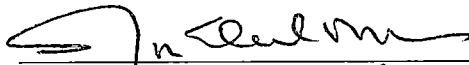
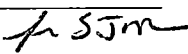
Despite the existence of these businesses, the Court's Order arbitrarily and capriciously places all of the neighborhood's alleged problems and issues on the Appellant. It ignores the steps that Appellant has taken to improve his business. The Court's Order therefore applies existing South Carolina law in an arbitrary and discriminatory fashion, in violation of the Appellant's Equal Protection rights under the United States and South Carolina Constitutions. See, *Skyscraper Corp. v. County of Newberry*, 475 S.E.2d 765 (1996); *Sandy Springs Water Co. v. Department of Health and Environmental Control*, 478 S.E.2d 60 (1996).

The Court's Order therefore discriminates against Appellant. Further, it deprives the Appellant of its Due Process and Equal Protection rights under the South Carolina and United States Constitutions.

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the Administrative Court Judge denying the Appellant's application for a seven-day renewal of its off premises beer and wine license.

Respectfully submitted,

By: 
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West Columbia, SC

July 8, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 08 2015

APPEAL FROM ADMINISTRATIVE LAW COURT SC Court of Appeals

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2015-000733

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

v.

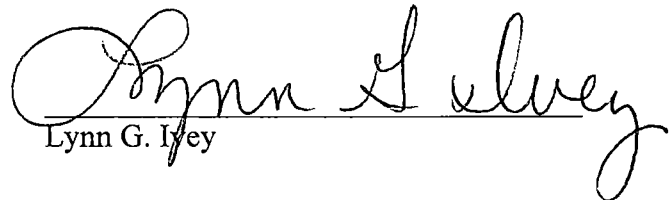
South Carolina Department of Revenue, Ellen Fishburne Triplett,
Keith McIver, Samuel L. Munson, Jocelyn Munson, and Michael Hill,..... Respondents.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that
I have served the Appellant's Initial Brief by mail, to the following parties by depositing
a copy of same in the United States Mail, postage prepaid, on July 8, 2015, addressed as
follows:

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Lynn G. Ivey

West Columbia, South Carolina

July 8, 2015



July 8, 2015

The Honorable Jenny Abbott Kitchings
Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 2921

RE: Kan Enterprises, Inc., d/b/a A1 Food Stores v. SC Department of
Revenue, et al
Appellant No. 2015-000733

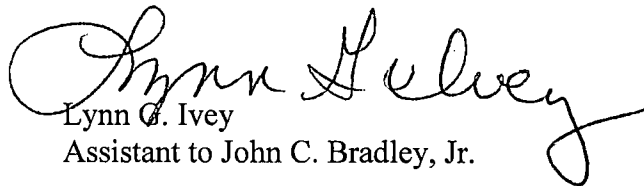
Dear Ms. Kitchings:

Please find attached to this letter the original and four copies of our Initial Brief and Designation of Matter. Please return the clocked copies via our courier.

By copy of this letter, we are serving opposing counsel of the same.

Thank you for your assistance with this matter.

Respectfully yours,



Lynn G. Ivey
Assistant to John C. Bradley, Jr.

Enclosures

cc: Justine M. Tate, Esquire
Sean Ryan, Esquire
Kathleen McDaniel, Esquire

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JUL 08 2015

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