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STATE OF SOUTH CAROLINA
In the Court of Appeal

ON APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

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15-ALJ-17-0004-CC
Appellate Case No. 2015-001209

T MMARK Industries, LLC, d/b/a T MMARK Liquors, Respondent,

v.

South Carolina Department of Revenue, Respondent,

and

Grace Covenant Tabernacle, Intervenor, Appellant.

INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE

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PROOF OF SERVICE

I, Jean M. O'Connor, do hereby certify that I have caused to be mailed postage pre-paid, a copy of the Respondent, South Carolina Department of Revenue's Initial Brief and Designation of Matter re: T MMARK Industries, LLC, d/b/a T MMARK Liquors vs. South Carolina Department of Revenue, and Grace Covenant Tabernacle, Docket No. 15-ALJ-17-0004-CC to Richard H. Wallace, Esquire, Harrison & Wallace, PO Box 8113, Columbia, SC 29202-8113 and Robert J. Thomas, Esquire, Rogers, Townsend & Thomas, PC, PO Box 100200, Columbia, SC 29202 this 17th day of July 2015.

Jean M. O'Connor

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I. Did the Administrative Law Court err in finding that the issues presented by the Appellant did not bar the renewal of T MMARK's License?

(i) Did the Administrative Law Court err in finding that the measurement requirement set forth in § 61-6-120, which specifically bars application to retail liquor license renewals, is not applicable to T MMARK's application for the renewal of its License?

(ii) Did Protestant Pastor Gerald Hughes properly protest T MMARK's original License application?

(a) Does handing a liquor license protest form to a Lexington County Sheriff constitute filing a valid protest to such license with the Department?

(b) Because the Appellant failed to raise issues regarding T MMARK's original License during the application process, are these issues now barred from review by this Court?

STATEMENT OF THE CASE

This appeal arises from an order of the South Carolina Administrative Law Court ("ALC") granting the renewal of the retail liquor license (the "License") of the Respondent, T MMARK Industries, LLC d/b/a T MMARK Liquors ("T MMARK"), located at 409 Glowworm Road, Swansea, South Carolina.

T MMARK commenced an action in the ALC by requesting a contested case hearing in January of 2015 seeking relief from the South Carolina Department of Revenue's (the "Department") Determination issued on December 9, 2014 (the "Determination"). In its Determination, the Department denied T MMARK's application for the renewal of the License because the Department received timely filed public protests in opposition to the renewal of the License pursuant to S.C. Code Ann. § 61-6-185 and S.C. Code Ann. Regs. 7-201 (Supp. 2011).

On February 27, 2015, the ALC granted the Appellant's Motion to Intervene in the action. On March 2, 2015, the ALC held a contested case hearing on the matter. The ALC issued a Final Order on the matter on March 25, 2015 (the "Final Order"), finding that the issues presented by the Appellant at the hearing did not bar the renewal of T MMARK's License.

In response to the Final Order, all three parties moved to alter or amend the Final Order. Appellant moved to alter or amend the Final Order on April 6, 2015. In its motion, the Appellant claimed: (i) that Deputy Bobby Snuffer from the Lexington County Sheriff's Office, in receiving a protest form from Protestant Pastor Gerald Hughes, was acting as "an agent of the state of South Carolina carrying out a function ordinarily performed by a SLED agent", and the lack of the Department's receipt of said protest is a

"mutual mistake" between the Department and T MMARK and (ii) there was a mutual mistake between the Department and T MMARK with respect to the Department's granting T MMARK's original License because the distance from the Appellant's location and T MMARK's location was less than 500 feet in violation of S.C. Code Ann. § 61-6-120 (2009). On April 16, 2015, T MMARK moved to reconsider the Final Order, arguing, in pertinent part, that: (i) Deputy Snuffer is not an agent of the State, (ii) the protest given to Deputy Snuffer was never submitted to the Department and therefore, not valid, and (iii) the Department's file, which was submitted into evidence at the hearing, includes a map created by SLED which correctly reflects a distance of more than 500 feet between Appellant's location and TMMARK's location. On April 20, 2015, the Department moved to alter or amend the Final Order, arguing, in pertinent part, that the Appellant's arguments contained in its motion were not issues properly before the ALC because they were issues in connection with T MMARK's original License application and not T MMARK's renewal License application. In addition, the Department argued that the ALC's findings regarding the distance between T MMARK's location and Appellant's location were incorrect.

The ALC granted the parties' motions and vacated the Final Order on May 4, 2015. The ALC issued an Amended Final Order on May 4, 2015 (the "Amended Final Order"), which amended some of the facts contained in the Final Order, but, ultimately, still found that the issues presented by the Appellant at the hearing did not bar the renewal of T MMARK's License.

On June 2, 2015, the Appellant filed a Notice of Appeal and served the same on the Department, T MMARK and the ALC.

STATEMENT OF THE FACTS

T MMARK holds a retail liquor license for its premises located at 409 Glowworm Road, Swansea, South Carolina. Patricia Kneece is the sole owner of T MMARK. Ms. Kneece's daughter and Mr. John Greg are responsible for the store's day-to-day management (R., p. ---; Tr., p. 10, lines 18-21; Tr., p.20, lines 17-25; Tr., p.21, lines 1-18).

The Department received T MMARK's application for its original license in March of 2014. The Department issued the original retail liquor license to T MMARK in May of 2014 (R., p.---Amended Final Order, p. 2). The Department did not receive any public protests to T MMARK's application for the original License (R., p. ---; Amended Final Order, pg. 3).

In investigating T MMARK's original application for the License, the State Law Enforcement Division ("SLED") measured the distance from T MMARK's location to the Appellant's location. SLED determined the Appellant's location was 512 feet from T MMARK's location (R., p. ---Amended Final Order, pg. 3). In the absence of any public protests to the original License and because T MMARK met all of the statutory requirements for licensure, the Department granted T MMARK the original License (R., p. ---Amended Final Order, pg. 2). On October 31, 2014, the Department received a renewal application for the License from T MMARK (R., p. ---Amended Final Order, pg. 2). Subsequently, the Department received valid public protests to the renewal application for the License (collectively, the "Written Protests") from James Timothy Cross on August 25, 2014; Caleb Hughes on September 26, 2014; Muamba Jimmy Ilunga and Jacky H. Smoak on September 30, 2014; Junior McIntosh on October 1, 2014;

Michael Mukendi, Doris Haley and Richard Haley on October 3, 2014; Jason P. Ahl on October 27, 2014; Chris Barfield, Ada Evelyn Bell, John Cathey, Maria Cantwell, Pastor Walter Fry, Cheryl L. Hughes, Joshua M. Hughes, Pastor Gerald W. Hughes, and Joyce F. Rau on October 31, 2014 (collectively, the "Protestants") (R., p. ---Department Determination, pg. 3, Exhibit 1).

Other than the timely filed Written Protests submitted by the Protestants, the Department determined that T MMARK met all other statutory requirements for the renewal of the License (R., p. ---Amended Final Order, pg. 2). As a result of the Department's receipt of the timely filed Written Protests, the Department denied the renewal of the License pursuant to a denial letter dated November 14, 2014 (R., p. ---Department's Denial Letter, Exhibit 1). T MMARK timely protested the denial of the renewal of the License via letter received by the Department on November 28, 2014 (R., p. ---T MMARK's Protest Letter, Exhibit 1).

On December 9, 2014, the Department issued its Determination on this matter. The Determination denied T MMARK's application for the renewal of the License because the Department received timely filed Written Protests in opposition to the renewal of the License pursuant to § 61-6-185 and Regulation 7-201[1] (R., p. ---Amended Final Order, pg. 2,3). These statutes allow the public to submit Written Protests to the Department against the issuance of a retail liquor license if a protestant complies with the requirements of the statute in rendering the protest. Accordingly, based on the receipt of

[1]Regulation 7-201 provides, in pertinent part: "If a valid protest is received with respect to the issuance of a new permit or license, the new permit or license will not be issued until the protest is resolved and the determination is made that the permit or license must be issued."

the Written Protests, the Department could not lawfully issue the License pursuant to the mandates set forth in § 61-6-185 (R., p. ---Department Determination, pg. 3, Exhibit 1).

In January of 2015, T MMARK requested a contested case hearing at the ALC seeking relief from the Determination. Prior to the hearing, the Appellant moved to intervene in the case (R., p. ---Intervenor's Motion to Intervene). The ALC granted the Appellant's motion (R., p. ---ALC's Order Granting Intervention). The ALC issued a Notice of Hearing on January 28, 2015, which scheduled the contested case hearing for March 2, 2015.

At the contested case hearing on March 2, 2015, Pastor Gerald Hughes, a Protestant, offered his testimony. Pastor Hughes is the pastor of Grace Covenant Tabernacle, located on Glowworm Road in Lexington County (R., p. ---Tr., p.45, lines 1-3). According to Pastor Hughes, in May 2014, Deputy Bobby Snuffer from the Lexington County Sheriff's Department notified Pastor Hughes that T MMARK was applying for a retail liquor license. Deputy Snuffer met Pastor Hughes outside of Grace Covenant Tabernacle, and, while sitting in the police car, Pastor Hughes filled out an alcohol beverage license protest form (R., p. ---Tr., p.45, lines 13-25; Tr., p.46, lines 1-15). Deputy Snuffer testified that he took the protest form back to the Lexington County Sheriff's Office (R., p. ---Tr., p.33, lines 1-12). The Department never received this protest form, nor does the Department have any record of ever receiving such protest form (R., p. ---Amended Final Order, pg. 3).

Despite allegedly filing a protest, Pastor Hughes did not move before the ALC or notify the Department of his alleged protest even after the Department issued the original

License and T MMARK began to operate (R., p. ---Tr., p.47, lines 11-14; Tr., p.49, 20-21).

ARGUMENTS

I. The Administrative Law Court did not err in finding that the issues presented by the Appellant did not bar the renewal of T MMARK's License.

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the standard of review. Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-01 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). Additionally, the review of the Amended Final Order must be confined to the record. This 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. Specifically, S.C. Code Ann. § 1-23-610(B) (2005) states:

> The reviewing tribunal 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 view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Section 1-23-610(B). See, Travelscape, LLC, v. South Carolina Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011).

> **The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.** Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App.2008); see Media Gen. Communications, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 144, 694 S.E.2d 525, 528 (2010) ("A reviewing court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law." (citing S. C. Code Ann. § 1–23–610(B)(a), (d)). (Emphasis added).

Centex Intl. Inc. v. S.C. Department of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 68, 69 (2013).

This Court may modify or reverse the Amended Final Order of the ALC if its findings are unsupported by substantial evidence on the whole record. In the present matter, substantial evidence supports the ALC's finding in the Amended Final Order that the facts presented by the Appellant at the hearing did not bar the renewal of T MMARK's License. Substantial evidence is defined as "evidence which would allow reasonable minds to reach the conclusion the administrative agency reached. Carroll v. Gaddy, 295 S.C. 426, 368 S.E.2d 909 (1988).

Further, the weight and credibility assigned to evidence presented at [an ALC] hearing … is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Given the weight and credibility assigned by the ALC to the evidence presented at the hearing, the following facts support the ALC's decision in this matter: (i) the Department determined that T MMARK met all statutory requirements in order to renew the License, including: (a) all principals of the entity are at least 21 years of age, (b) all principals and the business entity are a legal resident of the United States and South Carolina, and (c) all principals were residents of South Carolina for at least thirty (30) days prior to applying for the License; (ii) the Department never received any protest from Protestant Pastor Hughes with regard to T MMARK's original License application; (iii) Protestant Pastor Hughes never submitted the protest form to T MMARK's original License to the Department or SLED; and (iv) the SLED map, which the Department submitted into evidence, shows that SLED, the agency tasked with conducting such measurements, found the Appellant's location to be 512 feet from T MMARK's location (R., p. ---SLED Map, Exhibit 1).

Namely, the ALC found in its Final Order that "the plain meaning of S.C. Code Ann. § 61-6-120 is that the five hundred feet restriction cannot be challenged at the time of a license renewal. By not effectively filing their protests when the Department initially granted [T TMMARK's] retail liquor license, Grace Covenant Tabernacle and the Protestants lost their opportunity to raise this particular objection to the store's location" (R., p. ---Amended Final Order, pg. 4). Lastly, the ALC found that, "[d]espite the error in granting the original license, this Court finds no basis to void or reopen that license, but must consider only the merit of the renewal application at issue here" (R., p. ---Amended Final Order, pg. 5).

In its Amended Final Order, the ALC clearly states that the above-referenced findings were based on all of the evidence in the record, testimony of the witnesses and Protestants and the "burden of persuasion by the parties" (R., p. ---Amended Final Order, pg. 2). Thus, the ALC's finding in the Amended Final Order that the facts presented by the Appellant at the hearing did not bar the renewal of T MMARK's License rested on substantial evidence on the record as a whole.

Because substantial evidence supports the ALC's Amended Final Order, the issue becomes whether the Amended Final Order is based on an error of law. As explained more fully herein, the ALC's Amended Final Order does not contain any error of law. Therefore, the ALC did not abuse its discretion in renewing the License.[2] Accordingly, this Court should uphold the ALC's Amended Final Order.

(i) **The measurement requirement set forth in § 61-6-120, which specifically bars application to retail liquor license renewals, is not applicable to T MMARK's application for the renewal of its License.**

The Appellant asserts the ALC erred in granting the renewal of the License because § 61-6-120 and public policy prohibit a retail liquor store from being located within 500 feet of a church. Contrary to the Appellant's assertions, the ALC properly held that § 61-6-120 does not apply to renewal applications for liquor licenses. § 61-6-120(A) states, in pertinent part:

> (A) The department shall not grant or issue any license provided for in this article or Article 7 of this chapter, if the place of business is within three hundred feet of any church, school, or playground situated within a

[2]An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, 358 S.C. 647, 650, 595 S.E.2d 890, 891 (Ct. App. 2004).

> municipality or within five hundred feet of any church, school, or playground situation outside of a municipality.
>
> * * *
>
> **The above restrictions do not apply to the renewal of licenses** and they do not apply to new applications for locations which are licensed at the time the new application is filed with the department. (Emphasis added).

When asked to interpret the meaning of a statute, the ALC's task is solely that of seeking to effectuate the Legislature's intent. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). In deciding legislative intent, the first and most basic inquiry is whether the language of the statute is plain and unambiguous and whether the statute conveys a clear and definite meaning. If the answer is yes, no occasion exists for employing rules of statutory interpretation, and the ALC has no right to look for or impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). (R. p. ---Amended Final Order, pg. 4).

In its Amended Final Order, the ALC determined that the distance restrictions set forth in § 61-6-120 are not applicable to the renewal of the License and therefore, cannot be challenged at a contested case hearing for such matter. The Amended Final Order states, in pertinent part:

> Under S.C. Code Ann. § 61-6-120 (Supp. 2014), the Department cannot grant a retail liquor license for a location outside a municipality that is within five hundred feet of a church. The statute lays out how the distance is to be calculated and gives a definition for a church. Grace and the Protestants argue that this statute prohibits the Department from renewing the Petitioner's retail liquor license. However, the statute goes on to say that this "restriction does not apply to the renewal of licenses." Id. When asked to interpret the meaning of a statute, the Court's task is solely that of seeking to effectuate the legislature's intent. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). In deciding legislative intent,

> the first and most basic inquiry is whether the language of the statute is plain and unambiguous and whether the statute conveys a clear and definite meaning. If the answer is yes, no occasion exists for employing rules of statutory interpretation, and the court has no right to look for or impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). **The plain meaning of S.C. Code Ann. § 61-6-120 is that the five hundred feet restriction cannot be challenged at the time of a license renewal.** By not effectively filing their protests when the Department initially granted the Petitioner's retail liquor license, Grace and the Protestants lost their opportunity to raise this particular objection to the store's location.

(R., p. ---Amended Final Order, p. 4). (Emphasis added).

The ALC further states that, "Despite the error in granting the original license, this Court finds no basis to void or reopen that license, ***but must consider only the merit of the renewal application at issue here"*** (R., p. ---; Amended Final Order, p. 5). (Emphasis added).

The above-referenced statute clearly states that the distance requirement in § 61-6-120 does not apply to the renewal of retail liquor licenses. In fact, the ALC's Amended Final Order expressly concludes that "the plain meaning of S.C. Code Ann. § 61-6-120 is that the five hundred feet restriction cannot be challenged at the time of a license renewal" (R., p. ---Amended Final Order, pg. 4).[3] The only issue that was properly before the ALC in this matter was T MMARK's renewal application for the License. T MMARK's application for the original License was not protested and therefore, the original application was not before the ALC. Pursuant to § 61-6-120, the distance requirement only applies to original license applications and not renewal applications.

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[3]In its Initial Brief, the Appellant expressly admits that the ALC found in its Amended Final Order that the restrictions set forth in § 61-6-120 do not apply to the renewal of retail liquor licenses (R., p. ---Appellant's Initial Brief, pg. 8).

Therefore, because § 61-6-120 specifically bars its application to renewal licenses, and because the matter before the ALC was a renewal license, the distance requirement therein does not apply to the renewal of T MMARK's License and subsequently, the measurement restriction therein are rendered moot in this instance.[4]

(ii) <u>Protestant Pastor Gerald Hughes did not properly protest T MMARK's original License application.</u>

The Appellant asserts that the ALC erred in granting the renewal License because the original License should not have been issued. The Appellant asserts that the original License should not have been issued because Pastor Gerald Hughes completed a protest form in opposition to the original application for the License, but did not provide that protest form to the Department. Contrary to the Appellant's assertions, Pastor Hughes did not properly protest the application for the original License. Therefore, the Department properly granted the original License and the Appellant's assertions do not form a basis for denying T MMARK's renewal application.

Pursuant to Regulation 7-201, a person who wishes to protest the issuance or renewal of a retail liquor license must ***mail such protest to the Department*** and the protest must be postmarked on or before the date set forth in the "Notice of Application" published in the newspaper or the "Notice" posted at the site (emphasis added).

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[4] If the distance requirement set forth in § 61-6-120 was an issue properly before the ALC, the Department asserts that T MMARK's location is more than 500 feet from the Appellant's location. The SLED map, which the Department submitted into evidence, shows that SLED found the Appellant's location to be 512 feet from T MMARK's location. Because the distance requirement is not applicable to renewal applications, the Department did not present further evidence reflecting the correctness of this measurement to the ALC. Had the distance requirement been at issue before the ALC, the Department would have submitted additional documentation regarding the correctness of SLED's measurements into evidence.

Subsection 3(A) again states that all protests must be mailed to the Department of Revenue. Additionally, the first page of Department Form ABL-20 (Beer, Wine & Liquor Protest Form) specifically directs a protestant to mail the protest form to the South Carolina Department of Revenue.

It is undisputed that Pastor Hughes did not mail a protest to the Department regarding T MMARK's original application for the License. Instead, in its Initial Brief, Appellant claims that Deputy Bobby Snuffer from the Lexington County Sheriff's Office, in receiving the protest form from Protestant Pastor Gerald Hughes, was acting as "an agent of the state of South Carolina carrying out a function on behalf of the state". In support of its argument, Appellant cites several cases demonstrating that a County Sheriff is an agent of the state. While Deputy Snuffer may be an agent or "alter ego" of the state, the Appellant provides no evidence or authority that a Deputy, or anyone employed at a County Sheriff's office, is an agent of the Department as it relates to the receipt of public protests for the renewal of retail liquor licenses. The Appellant provides no statutory law or case law to support its argument that when a public protest is given to an "agent of the state" it is deemed valid and timely received by the Department pursuant to its written public protest procedure outlined in § 61-6-185 (2009) and Regulation 7-201. Pursuant to Appellant's argument, a protest could be delivered to any state employee at any state agency because that person is an agent of the state and such protest would be deemed received by the Department. This is clearly not the law of this State. The South Carolina Code of Laws does not refer to receipt of protests by a state agent. To the contrary, § 61-6-185 refers to protests being received by the Department. Because Pastor Hughes did not provide his protest to the Department, he failed to properly protest the application for the

original License and, because the application for the original License was not protested, the Department properly issued the original License.

(a) Handing a liquor license protest form to a Lexington County Sheriff does not constitute filing a valid protest to such license with the Department.

In its Initial Brief, Appellant argues that, in receiving the public protest form from Pastor Hughes, Deputy Snuffer was carrying out a function "ordinarily performed by SLED". Again, the Appellant's argument is without merit. Appellant fails to provide any evidence or authority that SLED agents "ordinarily" administer, collect or receive public protests of liquor license renewals on behalf of protestants or on behalf of the Department. It is not general practice, and therefore, not "ordinary" for a SLED agent to follow up with protestants regarding their intent to protest, or actively collect or receive written public protests from protestants as an agent for, or on behalf of the Department in any official capacity. Finally, it should be noted that the Department does not, by law or at its direction, expressly or indirectly, permit a County Sheriff's office to act as its agent with respect to collecting Written Protests on behalf of protestants. Furthermore, the Appellant presents no statutory authority or case law to support its assertion that providing a protest to a County Sheriff is sufficient to constitute delivery of a protest to the Department. To the contrary, § 61-6-185 clearly proscribes that a public protest to a retail liquor license be provided to the Department, not simply any "agent of the state".

If this Court employs the Appellant's argument and permits any County Sheriff's Department to act as the Department's agent with respect to collecting and receipt of public protests, it would cause absurd results with respect to the Department's administration and enforcement of alcoholic beverage laws. The Department handles a

voluminous amount of alcoholic beverage licensing applications, protests, and renewals each year throughout the state. It simply does not have the manpower to follow up with each member of every law enforcement agency in the state to determine whether they are in receipt of a public protest each time an alcohol license is applied for or renewed. To the contrary, and in accordance with § 61-6-185 and Regulation 7-201, the Department only recognizes and administers protests to retail liquor licenses that are properly delivered to the Department.

(b) <u>Because the Appellant failed to raise issues regarding T MMARK's original License during the application process, these issues are now barred from review by this Court.</u>

Here, as stated above, the Court's review is limited to the record. Section 1-23-610(B). Even if the Appellant's argument about allegedly protesting the original application for the License were properly before this Court, which it is not, the argument must fail. First and foremost, the protest described by the Appellant was a protest related to T MMARK's original license application for the License. The Department granted the License in May of 2014. The Appellant did nothing to address its alleged protest at that time.

The record reflects that Pastor Hughes knew T MMARK's store opened (R., p. ---Tr. p. 48, lines 20-21). In fact, Pastor Hughes testified that he drives past T MMARK's store eight times per week (R., p. ---Tr. p. 49, lines 3-11). Therefore, there can be no doubt that Pastor Hughes knew T MMARK's store received the License in May of 2014. There is no evidence in the record that Pastor Hughes did anything to address his alleged protest despite knowing T MMARK's store was open and operating. Instead, the

Appellant waited until the renewal application for the License to argue matters related to T MMARK's original application for the License.

The Appellant presents no case law or statutory law to support its ability to now reverse this previously decided issue. To the contrary, because this Court must confine its review to the record, the Appellant is not entitled to bring issues decided with regard to T MMARK's original License application before this Court. The Appellant should have brought its alleged protest to the attention of the Department and the ALC when T MMARK's original License was granted, but it did not and it cannot now bring that issue before this Court.

For the foregoing reasons, Protestant Pastor Gerald Hughes did not properly protest T MMARK's original License application. Further, the County Sheriff is not the Department's agent, in general, nor specifically, as it relates to the receipt of public protests for the renewal of retail liquor licenses. Lastly, the Appellant failed to raise its issues regarding T MMARK's original License during the application process, and therefore, such issues are now barred from review by this Court.

CONCLUSION

For the foregoing reasons, the Department requests that this Court uphold the ALC's Amended Final Order.

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July 17, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

ON APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2015-001209

T MMARK Industries, LLC, d/b/a T MMARK Liquors, Respondent,

v.

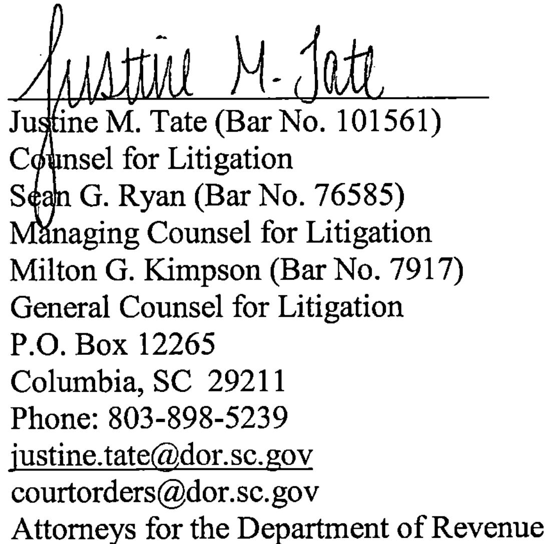
South Carolina Department of Revenue, Respondent,

and

Grace Covenant Tabernacle, Intervenor, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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