

RM: 64217

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No.: 10-ALJ-30-0631-AP

Palmetto Youth Academy Charter School,Respondent,

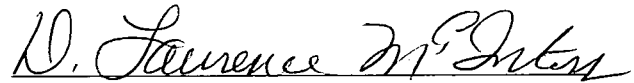
v.

Florence County School District One Board of Trustees,.....Appellant.

NOTICE OF APPEAL

Florence County School District One Board of Trustees appeals the decision of the Honorable Shirley C. Robinson dated May 4, 2012. Appellant received a copy of this decision on May 7, 2012.

May 14, 2012



D. Laurence McIntosh
MCINTOSH LAW OFFICE
Post Office Drawer 1831
Florence, South Carolina 29503
843-662-4328
Attorney for Appellant

Other Counsel or Record:
Samuel M. Mokeba
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
Attorney for Respondent

RECEIVED

MAY 15 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No.: 10-ALJ-30-0631-AP

Palmetto Youth Academy Charter School,Respondent,

v.

Florence County School District One Board of Trustees,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Youth Academy Charter School by depositing a copy of it in the United States Mail, postage prepaid, on May 14, 2012, addressed to their attorney of record, Samuel M. Mokeba, BAKER, RAVENEL & BENDER & L.L.P., 3710 Landmark Drive, Suite 400, Columbia, South Carolina 29204.

May 14, 2012



D. Laurence McIntosh
MCINTOSH LAW OFFICE
Post Office Drawer 1831
Florence, South Carolina 29503
843-662-4328
Attorney for Appellant

RECEIVED

MAY 15 2012

SC Court of Appeals

D. LAURENCE McINTOSH
ATTORNEY-AT-LAW
POST OFFICE DRAWER 1831
FLORENCE, SOUTH CAROLINA 29503-1831
(843) 662-4328
FACSIMILE: (843) 661-5183

RM. 64217

E-MAIL
dlmciatty2@aol.com

OFFICES
234 W. CHEVES STREET
FLORENCE, SC 29501

May 14, 2012

Ms. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

Via Federal Express #8689 4187 5963

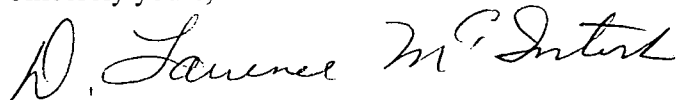
RE: Palmetto Youth Academy Charter School vs. Florence County School District 1 Board of Trustees.
Docket No.: 10-ALJ-30-0631-AP

Ms. Kitchings:

Enclosed for filing in this case are the following:

1. Notice of Appeal
2. Proof of Service
3. Copy of the Order of Judge Shirley C. Robinson, Administrative Law Judge, dated May 4, 2012
4. My check in the amount of \$100.00 in payment of the filing fee

Sincerely yours,



D. Laurence McIntosh

DLM/bjgc

Enclosures

cc: Honorable Shirley C. Robinson
Administrative Law Judge

Samuel M. Mokeba, Esquire

RECEIVED
MAY 15 2012
SC Court of Appeals

ORIGIN ID: FLOA (843) 662-4328
MCINTOSH LAW OFFICE
234 W CHEVES ST
FLORENCE, SC 295014404
UNITED STATES US

SHIP DATE: 14MAY12
ACTWGT: 0.2 LB
CAD: /POS1302
DIMS: 0x0x0 IN
BILL SENDER

TO JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEAL
1015 SUMTER ST

COLUMBIA SC 29201
(803) 734-1890 REF:
THU: PO: DEPT:



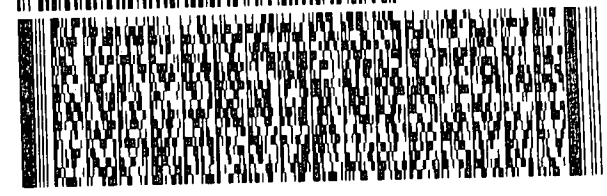
For FedEx Express® Shipments Only
Contents should be compatible with

FedEx Express US Airbill

FedEx Tracking Number

8689 4187 5963

Form ID No.



Insert airbill here

fedex.com 1.800.GoFedEx 1.800.463.3339

RECIPIENT'S BILL HERE

1 From This portion can be removed for Recipient's records.

Date 5/14/12 FedEx Tracking Number 868941875963

Sender's Name _____ Phone _____

Company _____

Address _____ Dept./Floor/Suite/Room _____

City _____ State _____ ZIP _____

2 Your Internal Billing Reference

3 To Recipient's Name _____ Phone _____

Company _____

Recipient's Address _____ Dept./Floor/Suite/Room _____

Address _____ To request a package be held at a specific FedEx location, print FedEx address here.

City _____ State _____ ZIP _____



8689 4187 5963

4a Express

Insured Price
Next business day
Shipments with
unless SATURDAY

FedEx 2Day
Shipments with
unless SATURDAY

4b Express 1

FedEx 1Day
Shipments with
unless SATURDAY

5 Packaging

FedEx Envelope*

6 Special Handling

SATURDAY
Not available for
FedEx
Sav

TRK# 8689 4187 5963
0215

TUE - 15 MAY
PRIORITY OVERNIGHT

28 USCA

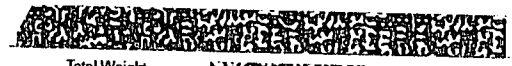
2920
SC-US CA



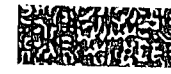
RT 104
EZ
5963
05.15

Yes Shipper's Declaration
Dry Ice, 9 UN 1845 _____ kg
Applied in FedEx packaging. Cargo Aircraft Only

Enter FedEx Acct. No. or Credit Card No. below. Other Billing
Recipient Third Party Credit Card Cash/Check



Total Weight



\$100 unless you declare a higher value. See the current FedEx Service Guide for details. Credit Card Auth.

8 Partial Delivery Signature Options If you require a signature, check Direct or Indirect.

No Signature Required
Package may be left without obtaining a signature for delivery.

Direct Signature
Someone at recipient's address may sign for delivery. Fee applies.

Indirect Signature
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies.

519

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Palmetto Youth Academy Charter School,)
)
Appellant,)
)
v.)
)
Florence County School District 1 Board of)
Commissioners,)
)
Respondent.)

Docket No. 10-ALJ-30-0631-AP

RECEIVED
ORDER MAY 15 2012
SC Court of Appeals

APPEARANCES

Palmetto Youth Academy Charter School: Samuel M. Mokeba, Esquire
Florence County School District 1 Board
of Commissioners: D. Lawrence McIntosh, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to S.C. Code Ann. §§ 59-40-10 et seq., the South Carolina Charter Schools Act of 1996 (“Act”). Appellant Palmetto Youth Academy Charter School (“Appellant”) filed an appeal with the ALC on June 23, 2010, seeking review of the Florence County School District 1 Board of Commissioners’ (“School District”) written decision dated June 1, 2010. In its decision, the School District determined that Appellant’s charter should be revoked based upon its failure to meet generally accepted standards of fiscal management.

After timely notice to the parties, oral arguments were held at the ALC in Columbia, South Carolina on April 18, 2012. The parties presented arguments on their respective positions at the hearing. After a review of the Record on Appeal and careful consideration of the parties’ arguments, the Court reverses the School District’s decision.

BACKGROUND

Appellant presented its charter to the South Carolina Department of Education’s Charter School Advisory Committee and the School District, and the charter was approved with operations to

FILED

MAY 04 2012

SC ADMIN. LAW COURT

begin in 2005 for the 2005-2006 academic school year. As required by statute, Appellant must annually prepare a report on the state of the school and present the report to the School District. As part of the annual reporting requirement, Appellant provided the School District with financial statements that disclosed the costs of administration, instruction, and other spending categories for its charter. Furthermore, as part of its own financial management requirements, the School District is required to ensure that an independent audit of its operations is performed each year. The District's audit process requires it to compile financial records from all its component units, or District schools. During the first two years of operations, Appellant's financial submissions to the School District, and from the District to the auditor, were met with general approval as indicated in the School District's audits for the 2005-2006 and 2006-2007 academic years. During those years, the School District received an unqualified or favorable review from its auditors.

At the end of the 2007-2008 academic year, Appellant submitted its financial statements to the School District in the same manner and format as those submitted during the previous two academic terms. However, this time the District informed Appellant that it must submit a complete audit for the 2007-2008 academic year. Based upon information received from the State Department of Education, Appellant believed it was not required to submit the more detailed audit. The School District later confirmed that Appellant received such information from the State Department of Education; however, the School District informed Appellant that this information was incorrect, and that Appellant must submit a complete audit to the School District. Appellant was informed that because it was now considered a "component unit" of the School District, it was required to have an independent audit completed rather than the more informal financial statements it had completed in the past.

Appellant was instructed to submit the completed independent audit by March 17, 2009; however, Appellant was unable to comply. After Appellant failed to meet the March 17, 2009 deadline, the School District – without consulting Appellant – took approximately \$10,000 of funds allocated for Appellant and retained Elliott Davis, LLC (Elliott Davis) to perform an independent audit for the 2007-2008 fiscal year. However, Appellant had already retained Kelly-Moser Consulting, LLC (Kelly-Moser), a financial management firm, to assist it in preparing documents for an audit. Appellant subsequently provided Elliott Davis with boxes of documents and evidence that

were compiled by Kelly-Moser in preparation for the required audit.

On January 25, 2010, Appellant received a letter from Elliott Davis informing them that they were terminating their professional relationship with Appellant for several reasons, including lack of information obtained from Appellant and that Elliott Davis felt uncomfortable completing the audit based upon its preliminary investigation. Elliott Davis did not reimburse the School District or Appellant with the initial funds it received to complete the audit as Elliott David considered the \$10,000 to be a retainer.¹

On March 18, 2010, the School District voted to revoke Appellant's charter at the end of the school year. The School District cited Appellant's failure to meet generally accepted standards of fiscal management as the reason for its revocation.² Further, the School District cited Elliott Davis's termination letter as support for the decision. (ROA, pgs. 4 and 5). On March 30, 2010, Appellant timely requested a hearing before final action was taken on the status of its charter. On May 20, 2010, the District confirmed its decision to revoke the charter of Appellant. Appellant timely filed a Notice of Appeal with the ALC on June 23, 2010.

JURISDICTION AND STANDARD OF REVIEW

The Act provides for the creation and establishment of charter schools in South Carolina. Although charter schools are exempted from complying with many laws and regulations applicable to a public school, a charter school "must" meet certain requirements as set forth in the Act. See, S.C. Code Ann. § 59-40-50(B). Further, S.C. Code Ann. § 59-40-60 provides that "[a]n approved charter application constitutes an agreement, and the terms must be the terms of a contract between the charter school and the sponsor," "[t]he contract between the charter school and the sponsor shall reflect all agreements regarding the release of the charter school from school district policies," and "[a] material revision of the terms of the contract between the charter school and the approving board may be made only with the approval of both parties." See also James Academy of Excellence v.

¹ During the hearing below, a representative of Elliott-Davis testified that a completed audit similar to Appellant's would cost approximately \$20,000.

² Because Appellant was considered a component unit of the School District, its failure to complete the independent audit affected the School District's audit, and it received a qualified (unfavorable) opinion as to the School's District's audit. Thus, the School District revoked Appellant's charter because of the qualified opinion's affect on the District ability to perform some of its functions.

Dorchester County School District Two, 376 S.C. 293, 299-300, 657 S.E.2d 469, 472 (2008).

S.C. Code Ann. § 59-40-110(C) provides that a sponsor must revoke a school's charter if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedure provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or
- (4) violated any provision of law from which the charter school was specifically exempted.³

Section 59-40-110(A) requires the sponsor to annually evaluate the conditions outlined in § 59-40-110(C) and to use those evaluation results in making a determination for nonrenewal or revocation of the charter. If a sponsor decides to revoke a charter, it must notify the charter school's governing body in writing and in reasonable detail of the grounds for the proposed termination at least sixty days prior to termination of the charter. See S.C. Code Ann. § 59-40-110(D). As provided in S.C. Code Ann. § 59-40-110(F), the charter school's governing body may then request, in writing, a hearing before the sponsor within fourteen days of receipt of the notice of termination of the charter. After receipt of a timely request for a hearing by a charter school governing body, the sponsor shall conduct a hearing prior to taking final action. See S.C. Code Ann. § 59-40-110(F). A final decision of the sponsor to revoke a charter may then be appealed to this Court pursuant to S.C. Code Ann. § 59-40-90.

The ALC has authority to review the final order of the School District as an appeal under S.C. Code Ann. § 1-23-380(5), which provides for reversal only if its findings are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

³ As specified by S.C. Code Ann. § 59-40-110(E), the only grounds for revocation of a charter are those contained in § 59-40-110(C).

- (e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In applying this scope of review, the reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005). Therefore, in this instance, the Court will review the findings of the School District to determine if its findings of fact or conclusions of law are based on substantial evidence contained in the whole record. In Porter v. South Carolina Public Service Commission, 333 S.C. 12, 20-21, 507 S.E.2d 328, 332 (1998), the South Carolina Supreme Court defined the substantial evidence standard of review as follows:

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. Substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding.

The Supreme Court found "[t]his deferential standard of review does not mean, however, the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." Id. at 21, 507 S.E.2d at 332. Further, the agency "must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record." Id. "An administrative body must make findings, which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." Id.

DISCUSSION

Appellant raises the following issues on appeal:

1. The School District's reasons for revocation do not constitute a material breach or violation of Appellant's charter.
2. The School District's assertion that Appellant failed to meet generally accepted standards of fiscal management is

erroneous in light of the substantial evidence in the record.

3. The School District's decision to revoke Appellant's charter is arbitrary and capricious; characterized by an abuse of discretion; or clearly unwarranted exercise of discretion.

Authority to Revoke Charter Pursuant to S.C. Code Ann. § 59-40-110(C)

Appellant first argues that the School District's reason for terminating its charter does not constitute a material breach or violation of the charter. I disagree. Under the Act, a sponsor – here, the School District – is authorized and required to revoke a charter if it determines the charter school committed any one of the four violations stated in S.C. Code Ann. § 59-40-110(C). Section 59-40-110(C)(3) provides that a charter must be revoked if the sponsor determines that the charter school “failed to meet generally accepted standards of fiscal management.” In this case, the School District determined that Appellant's charter must be revoked due to “material violations of conditions, standards and procedures in the management of [Appellant's] finances and the operation of [its] school.” Thus, the School District was well within its authority to revoke Appellant's charter based upon fiscal management concerns.

School District's Decision to Revoke Charter

Appellant next argues that the School District's decision is erroneous in light of the substantial evidence in the record, is arbitrary and capricious, and characterized by an abuse of discretion. I agree.

Pursuant to S.C. Code Ann. § 59-40-110(B)(2), Appellant submitted financial statements to the School District which disclosed the costs of administration, instruction, and other spending categories for its charter during the first two years of operation. These financial submissions to the School District were met with general approval. At the end of the 2007-2008 academic year, Appellant again submitted its financial statements, in the same format, to the School District. However, Appellant was informed that because it was now considered a “component unit” of the School District, it was required to have an independent audit completed and submitted to the School District. Appellant was given no prior notice of the change or why it was now being considered a component unit in year 3 of operation when its prior submissions were met with general approval. Moreover, Appellant contacted the State Department of Education and was informed that an

independent audit was not necessary, although the School District later confirmed that the information given to Appellant by the State Department of Education was incorrect.

Although the Respondent never gave Appellant a reason for why it is now considered a component unit of the School District, Appellant nevertheless attempted to have an independent audit completed prior to the deadline given by the School District. Appellant was diligent in retaining a Kelly-Moser, a firm that is familiar with and does work with other charter schools, to help get their records in order for the audit, however because of funding constraints, Appellant was unable to have the audit completed before the deadline. Subsequently, the School District took approximately \$10,000 of Appellant's allocated money and retained Elliott Davis to perform the independent audit for the 2007-2008 academic year. By letter dated January 26, 2010, Elliott Davis informed both Appellant and the School District that it was terminating its professional relationship with Appellant prior to the completion of the audit based upon lack of information received from Appellant, and because Elliott Davis believed that funds of Appellant had been comingled with another entity. (ROA Pg. 5). Despite having terminated the relationship prior to the completion of the audit, Elliott Davis did not return the \$10,000 to Appellant or the School District as it viewed the payment as a "retainer." Furthermore, the School District did not reallocate those funds to Appellant.⁴

The School District abused its discretion in terminating Appellant's charter based upon fiscal management issues as relayed in Elliott Davis' January 26, 2010 letter. (ROA Pg. 4). First, there is no statute or regulation that defines what constitutes generally accepted standards of fiscal management. Although the School District argues that failure to complete an independent audit would constitute failure to meet generally accepted standards of fiscal management, the School District's own actions prevented – or at a minimum, hindered – Appellant's ability to ensure that an independent audit was completed. Specifically, during Elliott Davis' investigation, it concluded that Appellant had comingled its funds with another entity. However, had either Elliott Davis or the

⁴ Appellant subsequently retained Kelly-Moser to complete the 2007-2008 audit. The same initial information forwarded to Elliott-Davis by Appellant was used to complete the subsequent audit. Notably, during oral arguments, the School District acknowledged that Appellant is continuing to operate and all of its audits subsequent to the 2007-2008 academic year have been met with satisfaction by the School District. Appellant further noted that Kelly-Moser has been retained by Appellant in each subsequent year's audit.

School District made even a cursory inquiry, they could have learned that Appellant and the separate entity, Palmetto Youth Services, were one and the same.⁵ Thus, any concern regarding the possibility of comingling of Appellant's money with another entity was meritless. Secondly, the School District took \$10,000 of Appellant's allocated money to fund the Elliott-Davis audit. After the premature conclusion of the professional relationship, neither Elliott-Davis nor the School District reallocated this money to Appellant so that it could retain a firm to complete the audit. For a small charter school that functions on a stringent budget, generating approximately twenty thousand dollars to complete an audit near the end of the school year is a difficult – if not impossible – task. Put simply, it was an abuse of discretion for the School District to take Appellant's allocated money to pay for an audit that was never completed, fail to reallocate the funds to Appellant to have the audit done, and then revoke Appellant's charter based upon its failure to have that audit completed.

Accordingly, having reviewed the entire record, and listened carefully to the arguments presented by the parties, the Court finds that the School District abused its discretion in revoking Appellant's charter, and the Court reverses the School District's decision.

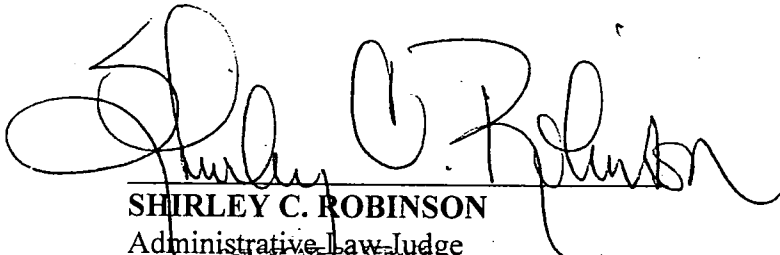
ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that the School District's decision dated June 1, 2010 is **REVERSED**.

AND IT IS SO ORDERED:

May 24th, 2012
Columbia, South Carolina


SHIRLEY C. ROBINSON
Administrative Law Judge

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party(ies) or their attorney(s).

This 4 day of May 2012
By: Heather Henderson
Judicial Law Clerk

⁵ During oral arguments, Appellant clarified that Palmetto Youth Services is a non-profit corporation doing business as Palmetto Youth Academy, and this information would have been provided to Elliott Davis had they made inquiry.