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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

Hon. John D. McLeod, Administrative Law Judge
Trial Court Case No. 2016ALJ170008CC

RECEIVED
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SC Court of Appeals

Appellate Case No. 2016-000593

Ex Parte: Johnnie Cordero, Appellant,

In Re: Fnu Satish Kumar d/b/a Piney Xpress, Petitioner,

v.

South Carolina Department of Revenue, Respondent.

RECORD ON APPEAL

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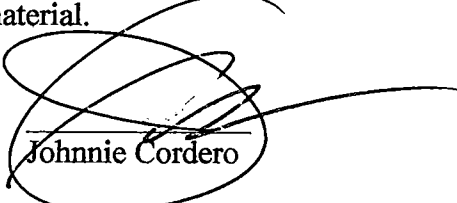
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CERTIFICATION OF APPELLANT

I, Johnnie Cordero, hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: Columbia, South Carolina
25 August 2016


Johnnie Cordero

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Fnu Satish Kumar d/b/a Piney Xpress,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 16-ALJ-17-0008-CC

FINAL ORDER AND DECISION

FILED

MAR 14 2016

SC ADMIN. LAW COURT

APPEARANCES: Kenneth E. Allen, Esquire For Petitioner
Sarah Khouri, Esquire For Respondent

STATEMENT OF THE CASE

This matter came before the Administrative Law Court ("ALC" or "Court") as a contested case hearing pursuant to S.C. Code Ann. § 1-23-600 (Supp. 2014) and S.C. Code Ann. § 61-2-260 (2009).

Respondent South Carolina Department of Revenue ("Department" or "SCDOR") denied Fnu Satish Kumar d/b/a Piney Xpress ("Petitioner" or "Applicant") application for a seven day off-premises beer and wine permit because of the timely filed protest by Reverend Dr. Johnnie Cordero.¹

A hearing on this matter was held at 10:00 a.m. on Tuesday, March 8, 2016 at the offices of the ALC in Columbia, South Carolina. After listening to the testimony and weighing all evidence presented at the hearing, this Court finds that Petitioner's permit for the sale of beer and wine for off-premises consumption shall be granted.

At the commencement of the hearing, Reverend Cordero presented the Court with a Motion to Intervene as a party Respondent. To show good cause existed to grant the motion, Reverend Cordero asserted that the Department was merely a neutral party in these matters and that he would like to appeal if the Court granted Petitioner's license. The Department had no

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¹ The Applicant filed his original application for an 'on-premises' beer & wine permit with the Department of Revenue on December 8, 2015. However, Counsel for Applicant informed the Court upon the commencement of the hearing, on March 8, 2016, that the application was modified as an 'off-premises' beer & permit, which is the type of permit that was intended all along, as the Applicant operates a convenience store.

objection to Reverend Cordero's motion. However, Petitioner argued that the motion was untimely and that Reverend Cordero also had an opportunity to testify as a Protestant.

Despite Reverend Cordero's articulate argument and his courtesy toward the Court and the parties, the Court found that the motion was untimely. Ruling from the bench, the Court denied the motion to intervene. See SCALC Rule 20 (stating in part that, "Unless otherwise ordered by the administrative law judge, the motion to intervene shall be filed at least twenty (20) days before the hearing. Any later motion shall contain a statement of good cause for the failure to intervene earlier.").

FINDINGS OF FACT

Having observed the testimony of the witnesses and exhibits presented at the hearing and closely passed upon their credibility, I make the following Findings of Fact by a preponderance of evidence:

1. Notice of the time, date, place and subject matter of the hearing was timely given to all parties and to all Protestants.

2. This case involves an application for a seven day off-premises beer and wine permit submitted by Fnu Satish Kumar d/b/a Piney Xpress, located at 1001 Piney Woods Road, Columbia, SC, 29210.

3. Applicant is twenty-one years of age or older, is a legal resident of the United States and has been a legal resident of South Carolina for at least thirty (30) days before the date of the application. Applicant has not had a license suspended or revoked within two years of the date of the application.

4. The South Carolina Law Enforcement Division (SLED) report indicates that the location meets all of SLED's requirements for issuance of the permit.

5. Respondent South Carolina Department of Revenue also averred that the Petitioner and the business location meet the statutory qualifications to hold a seven day off-premises beer and wine permit and that it would have granted the application but for the timely filed protest.

6. The subject location is a general convenience store for one-stop shopping that is located in Richland County outside the municipal limits of Columbia, S.C. The business has been open since January 23, 2016. The area surrounding the subject location is mostly

residential, but the subject location is zoned neighborhood-commercial (NC). There are no churches, schools or playgrounds located within 500 feet of subject location.

7. Puneet Kumar ("Kumar") will be managing the day-to-day operations of the business with his father, Fnu Satish Kumar, who is the owner and the Applicant. Mr. Kumar is thirty-one years old and has previous experience owning and operating a business licensed to sell alcohol. From 2009 to 2013, Mr. Kumar operated a convenience store in Marion, S.C., that was permitted to sell beer and wine for off-premises consumption. Additionally, from 2011 to 2013, Mr. Kumar operated an adjoining business that was licensed to sell liquor. Mr. Kumar does not owe any outstanding taxes to the state of South Carolina, and he does not have a record of any violations or complaints related to his prior experience selling alcohol.

8. The subject location will operate seven days a week during the hours of 6:00 a.m. until 10:00 p.m. The Kumars intend to I.D. all customers, and they will not sell to patrons that appear to be intoxicated. Neither loitering nor on-premises consumption will be allowed.

9. The subject location has eight parking spots with additional space to add parking spots. The location also has security cameras and regularly scheduled trash pickup by ASI, a local service. The Kumars will also do a general trash pickup on the property on a daily basis.

10. Protestant Reverend Dr. Johnnie Cordero ("Protestant") filed a protest on his behalf and for the general concern of local residents. The Protestant lives within close walking distance of the subject location. The basis for the protest is the suitability of the location, which the Protestant contends is an entirely residential area. The Protestant contends that the subject location does not suit the daily needs of the residents. Furthermore, the Protestant contends that the subject location abuts a multi-family dwelling and the location is not suitable because it will invite criminal activity.

11. I find that the testimony of the Protestant, though very earnest and articulate, does not present facts of sufficient gravity to warrant denial of the permit.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. S.C. Code Ann. § 1-23-600 (Supp. 2014) grants jurisdiction to the Administrative Law Court to hear contested cases under the Administrative Procedures Act. Additionally, S.C. Code Ann. § 61-2-260 (2009) grants the Administrative Law Court the responsibilities to determine contested matters governing alcoholic beverages, beer and wine.

2. “[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed[.]” Palmer v. S.C. Alcoholic Beverage Control Comm’n, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984); see also Wall v. S.C. Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977).

3. The weight and credibility assigned to evidence presented at the hearing of a matter 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).

4. S.C. Code Ann. § 61-4-520 (2009) establishes the criteria for the issuance of a beer and wine permit. Included in the criteria is the requirement that the proposed location be a proper and suitable one. S.C. Code Ann § 61-4-520(6)-(7) (2009).

5. Although “proper location” is not statutorily defined, broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit. See Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981).

6. The determination of suitability of location is not necessarily a function solely of geography. Rather, it involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community within which it is to be located. Kearney v. Allen, 287 S.C. 324, 338 S.E.2d 335 (1985); Schudel v. S.C. Alcoholic Beverage Control Comm’n, 276 S.C. 138, 276 S.E.2d 308 (1981).

7. In determining whether a proposed location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 338 S.E.2d 335 (1985); Palmer v. S.C. Alcoholic Beverage Control

Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984) (citing Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301 (1972)).

8. The factual determination of whether or not an application is granted or denied is usually the sole prerogative of the executive agency charged with rendering that decision. Palmer v. S.C. Alcoholic Beverage Control Comm'n, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984). As the trier of fact, an administrative law judge is authorized to determine the fitness or suitability of the proposed business location of an applicant for permits and licenses to sell alcoholic beverages using broad but not unbridled discretion. Byers v. S.C. Alcoholic Beverage Control Comm'n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984).

9. Without sufficient evidence of an adverse impact on the community, the application must not be denied if the statutory criteria are satisfied. The fact that a Protestant objects to the issuance of a permit is not a sufficient reason by itself to deny the application. See 45 Am.Jur. 2d Intoxicating Liquors § 162 (Supp. 1995); 48 C.J.S. Intoxicating Liquors § 119 (1981).

10. I conclude that the Petitioner has met its burden of proof in showing that he meets all of the statutory requirements for holding a seven day off-premises beer and wine permit. Although cognizant of the Protestant's concerns, I conclude that the proposed location is a proper one for granting the permit. The location is suitable for Petitioner's operation and it will not be detrimental to the welfare of the surrounding community.

ORDER

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

IT IS HEREBY ORDERED that Respondent shall continue to process Petitioner's application and issue the permit upon the satisfaction of all administrative requirements.

AND IT IS SO ORDERED.

March 14, 2016
Columbia, S.C.


John D. McLeod, Judge
S.C. Administrative Law Court

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 16-ALJ-17-0008-CC

Fnu Satish Kumar, d/b/a
Piney Xpress,

Petitioner,

v.

South Carolina Department of
Revenue,

Respondent.

ADMINISTRATIVE HEARING

Tuesday, March 8, 2016
10:02 a.m. - 10:40 a.m.

The hearing before the Honorable John D. McLeod was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 8th day of March, 2016 before Amanda J. Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.



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(7)

APPEARANCES

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Attorney for the Respondent

Also Present:
Johnnie Cordero, Protestant
Hannah Barnhardt, Creel Court Reporting, Inc.

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(8)

1 MS. KHOURI: Okay.

2 THE COURT: Any objections?

3 MR. ALLEN: None, Your Honor. And if I might add,
4 we have amended this application, Judge. It
5 was originally for on-premise, it's now been
6 amended to be off-premise sales only.

7 THE COURT: Does the protestant know that?

8 MR. ALLEN: I told him that this morning. We just
9 amended it this morning, Judge.

10 THE COURT: I see. If you want to hand that up.

11 MS. KHOURI: Thank you.

12 THE COURT: Okay. Respondents Exhibit One, which is
13 the Department's file, is admitted in evidence
14 without objection.

15 (Respondent's Exhibit Number One was marked for
16 identification purposes prior to the hearing and
17 admitted into evidence at this time.)

18 THE COURT: All right, Mr. Allen, you may proceed.

19 MR. ALLEN: Thank you, Your Honor. Judge, very
20 briefly I plan to just call one witness, Your
21 Honor. Puneet Kumar, who is the gentleman
22 standing right here. Puneet come on around and
23 have a seat. He is the son of the applicant,
24 Your Honor. The applicant himself is standing
25 right here behind me. As I said this is the --



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(9)

1 A: I'm 30 year old.

2 Q: 30 years old.

3 A: I just turn 31 last week.

4 Q: You just turned 31, okay. And you filed
5 documents with the Department of Revenue, so
6 you're the manager of this store, is that
7 correct?

8 A: That's right, sir.

9 Q: So you're going to be working there with your
10 dad and for your dad?

11 A: All the time.

12 Q: Okay. Before we get to this store, have you
13 ever worked at or been involved in any location
14 that had an alcohol license?

15 A: Yes, sir.

16 Q: Tell us when and where?

17 A: It was in 2009 Marion, South Carolina.

18 Q: Marion?

19 A: Marion, South Carolina. My wife, she was the
20 owner of the business and we both worked there.
21 We worked there from 2009 to 2013. We had
22 Bill's Convenient Store where we used to sell
23 off-premise beer over there. And then we had
24 a liquor store next to that that I worked from
25 2011 to 2013.



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1 identification purposes prior to the hearing and
2 introduced into the record at this time.)

3 Q: Is that the store we're here on today?

4 A: That's right, sir.

5 Q: Okay. Is it properly zoned for a convenience
6 store?

7 A: Yes, sir. It is neighborhood commercial
8 zoning.

9 Q: Neighborhood commercial?

10 A: Yes, sir.

11 Q: Okay. And what is your understanding about it
12 having been licensed in the past, years ago?

13 A: Well, when I spoke to the broker when I was
14 about to purchase this property, me and my dad
15 were about to purchase this property, he said
16 it was originally a convenience store and they
17 were selling beer over there, but it was a long
18 time ago.

19 Q: Long time ago. So, you don't know of your own
20 knowledge, that's just what someone told you?

21 A: Yeah, I don't know.

22 Q: Okay, okay. What days and hours will the store
23 be open?

24 A: It will be seven days a week, from six o'clock
25 to ten o'clock.



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(11)

1 -- procedural matter before we go any further?

2 THE COURT: Yes, sir.

3 MOTION TO INTERVENE - MR. CORDERO:

4 MR. CORDERO: Thank you, Judge. Judge, I have
5 already served a motion to intervene on behalf
6 of myself on both parties. And I have one if
7 I could hand it up to the court? I know it's
8 untimely, however, there were reasons for it
9 and I have that included in my statement of
10 good cause. May I hand that to Your Honor?

11 THE COURT: Yes, sir.

12 MR. CORDERO: Thank you, Your Honor.

13 (Protestant's Exhibit Number One was marked for
14 identification purposes.)

15 COURT REPORTER: May I get your name, and your
16 spelling of your name, Reverend, please?

17 MR. CORDERO: Yes. My name is Johnnie, J-O-H-N-N-I-
18 E. Last name Cordero, C-O-R-D, as in David, E-
19 R-O.

20 COURT REPORTER: Thank you.

21 MR. CORDERO: I'm the protestant in this matter.

22 THE COURT: All right. I'll hear you -- I'll hear
23 you argue your motion first. I have it in my
24 hand and I've read it but you're entitled to an
25 argument on there.



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1 MR. CORDERO: Yes, Your Honor. And thank you, again
2 may it please the court. Your Honor, the only
3 issue in this -- as far as I understand for the
4 motion for -- for intervention is whether or
5 not I am considered to be an aggrieved party.
6 And of course I now have to provide a statement
7 of good cause. Good cause is simply that it
8 was my understanding that the Department of
9 Revenue was going to represent us adequately,
10 but I found out that that is not the case after
11 talking to the attorney, and no disrespect to
12 her. But what happens is she is actually a
13 neutral party in her own words, as she
14 testified -- as indicated to me. And as a
15 neutral party I don't feel that she can
16 satisfactorily represent me. Now, when I found
17 that information out I was already within the
18 20 days as required. And that's why I filed
19 the motion. I would also add, sir, that
20 there's not going to be any prejudice in this
21 court. There will be no delay in the
22 proceedings because everyone here knew I was in
23 the matter from the very beginning. I'm the
24 only protestant in this case and therefore
25 there's no prejudice, no delay, and it's not



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1 done for any other reason. But I would like to
2 have the opportunity to be able to cross-
3 examine the witnesses and to -- and also should
4 this matter be decided against me, I would like
5 to have the right to file an appeal to the
6 higher court. That's assuming that happens.
7 That's my reasoning. And I hope Your Honor
8 would rule favorably fully.

9 THE COURT: Any response, Ms. Khouri?

10 MS. KHOURI: I don't have any objections to him
11 intervening.

12 THE COURT: Mr. Allen?

13 MOTION TO INTERVENE - MR. ALLEN:

14 MR. ALLEN: Thank you, Your Honor. Judge, obviously
15 we would object. As he indicated, it was just
16 served on us today which is no where meeting
17 the time requirement of the rules. He is a
18 protestant. We have no problem with him
19 testifying. I suspect given some of the folks
20 he has brought with him that his intentions are
21 to call witnesses who, Judge, are folks who did
22 not protest, who can not testify because they
23 did not protest. Allowing him to now, at the
24 last minute, be made a party and -- and call
25 those folks as his witnesses, it would be



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1 circumventing the system, it would be surprise
2 to us because it would be protestants that we
3 knew nothing about. So for all these reasons
4 we don't think he should be allowed to
5 intervene, Judge.

6 THE COURT: Thank you.

7 MR. CORDERO: May I, Your Honor?

8 THE COURT: In reply, yes, sir.

9 MOTION TO INTERVENE - REPLY BY MR. CORDERO:

10 MR. CORDERO: First of all the people who are here,
11 are not required to be protestants. They could
12 be called as witness wether or not they filed
13 to protest it or not. But that -- I don't
14 think that's the issue here, Your Honor. The
15 issue here is very simply wether or not this
16 would prejudice these proceedings and anyone be
17 delayed. Counsel anticipates my strategy. And
18 I did not say I was going to call any witnesses
19 and I don't anticipate that I will have to call
20 witnesses but I do want the right to cross-
21 examine the witness that was placed on the
22 stand. Who, by the way, and just for the
23 record, is not the petitioner in this matter.
24 I think it was clear that this is the son of
25 the petitioner, it should be the petitioner who



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1 should be testifying. But, be that as it may,
2 Judge, I don't plan to -- anticipate that this
3 is going to extend the proceedings at all. I
4 have no intentions of calling anyone. There
5 are people here as he has pointed out. All of
6 these are members from the community. The
7 sheriff's department, a representative from the
8 sheriff's department is here as well. So, we
9 stand united in this one thing, sir, but we
10 need to have someone who is going to speak up
11 and make this protest clear on behalf of -- on
12 behalf of the community. I'm also a resident
13 of the community so I have standing to do that.
14 I would again request that Your Honor grant the
15 motion in its entirety.

16 THE COURT: Thanks. Well, notwithstanding your
17 very articulate argument, I'm going to -- I'm
18 going to deny the motion on the basis of the
19 timeliness alone. The rules are written for a
20 reason. If this were 19 days ahead of the
21 trial or something like that I might bend them
22 a little bit and allow you in, but on the day
23 of the hearing, just can't do it. Denied.

24 MR. CORDERO: Your Honor, one more thing. Just on
25 preservation for appeal in case this decision



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1 is over turned. Forgive me for sitting, the
2 statute provides -- and I'm not here to quote
3 the statute to Your Honor of course, but the
4 statute provides that -- that such a motion can
5 be made on the day of the hearing, so of course
6 it's discretionary on your part, we understand
7 that, but the motion is not technically
8 untimely because it is being filed on the day
9 of the motion. That's all I'm going to say
10 just for the record. Thank you, Your Honor.
11 And I accept your ruling.

12 THE COURT: Very well. Now I'll hear from you. If
13 you'll be sworn, please.

14 MR. CORDERO: Yes, sir.

15 JOHNNIE CORDERO, having been duly sworn, testifies as
16 follows:

17 MR. CORDERO - STATEMENT OF PROTESTANT:

18 MR. CORDERO: My name is Johnnie Cordero. I reside
19 at 4204 Mandell Drive, in Columbia, South
20 Carolina. I am a resident of the neighborhood
21 and I have filed this protest on behalf of
22 myself and I also speak for -- to the extent
23 that I may, for the community which is
24 represented here.

25 COURT REPORTER: I'm going to ask that you speak up,



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(17)

1 A: Yes.

2 Q: And you said you lived in the neighborhood?

3 A: Yes.

4 Q: Where do you live? How far away are you?

5 A: 4204 Mandell Drive. I'm -- if I had to guess
6 I'd say 200 feet away maybe.

7 Q: By car or by walking?

8 A: As the crow flies -- no, walking.

9 Q: Okay. Can you see this little store from your
10 home?

11 A: Can I see it from my home? No. No, I cannot.

12 Q: Okay. Okay. All right. Thank you.

13 MR. CORDERO: May I, Your Honor?

14 THE COURT: Only in reply to ---

15 REPLY BY MR. CORDERO:

16 MR. CORDERO: In -- yes, in reply. Just to point
17 out, I understand where counsel is going, but
18 just to point out that the requirement to be a
19 protestant is really that I live in the county
20 and I certainly do. But I am in walking
21 distance. I can roll out of my bed and be at
22 that building in two minutes. That's how close
23 I live to it.

24 THE COURT: All right. Before you step down I want
25 to go back to your motion for just a moment.



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(18)

1 MR. CORDERO: Yes, sir.

2 THE COURT: You heard the objections cited by, Mr.
3 Allen. And when I said the timeliness of it
4 was the basis for my refusal ---

5 MR. CORDERO: Yes, sir.

6 THE COURT: --- or denial of it, that encompasses
7 the unfairness to the counsel in preparing his
8 case to meet whatever possibilities might arise
9 from cross-examination and the presentation of
10 witnesses. So, perhaps I was a little bit too
11 brief in my explanation of the reason for the
12 denial, but it is in respect of the duties of
13 the other counsel that added to my decision.
14 Thank you, sir.

15 MR. CORDERO: I -- I do understand, Your Honor, and
16 I certainly accept.

17 THE COURT: You may step down.

18 MR. CORDERO: Thank you, Judge.

19 THE COURT: Anything in reply, Ms. Khouri?

20 MS. KHOURI: No, Your Honor.

21 MR. ALLEN: Just a closing argument, Your Honor.

22 MR. CORDERO: Am I going to be permitted a closing
23 argument, Your Honor?

24 THE COURT: No, sir.

25 MR. ALLEN: May I, Your Honor?



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(19)

1 documentation of the Sunday beer and wine?

2 MS. KHOURI: Oh, no, Your Honor. I just ---

3 MR. ALLEN: We need to amend that.

4 MS. KHOURI: Yeah, he's going to have to amend the
5 application because I didn't know until this
6 morning when I got here. He has given me a
7 copy of it, but that's going to have to be
8 amended back when I get to the office.

9 MR. ALLEN: We will do that before we leave the
10 courtroom, Your Honor.

11 THE COURT: All right. Well, I'll take the matter
12 under advisement. But while I thank all of
13 these fine folks who have come here today I
14 will tell you that if -- if I should deny this
15 license it will be different from what I have
16 done in many, many other exactly similar cases.
17 But I will go over my law clerk's notes, I will
18 consider your earnest argument. I don't doubt
19 your strong feeling about the issue and the
20 feeling of all these people here with you.
21 Thank you.

22 MR. CORDERO: Judge, may I? I know, Your Honor, has
23 ruled may I?

24 THE COURT: No, sir. We are concluded now. We'll
25 be adjourned.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR RETAIL BEER,
WINE, AND LIQUOR

ABL-901
(Rev. 5/1/15)
4280

Mail to: SC Department of Revenue, ABL Section, Columbia, SC 29214-0907
Telephone: (803) 898-5864 DOR Website: www.dor.sc.gov

File Number: 320716944

- License Type
- ☐ On premises beer & wine
 - ☐ Off premises beer & wine
 - ☐ Brewpub
 - ☒ 7-day on-premises beer & wine
 - ☐ 7-day off-premises beer & wine
 - ☐ Sunday/Sabbath beer & wine
 - ☐ Business (restaurant/hotel/motel) liquor by the drink
 - ☐ Nonprofit private club liquor by the drink
 - ☐ Retail liquor store
 - ☐ Alcoholic liquors (cooking license)
 - ☐ 120 day temporary beer & wine
 - ☐ *120 day temporary liquor by the drink
 - ☐ *120 day temporary retail liquor
 - ☐ *Certification fee

Nonrefundable Filing Fee

\$ 300.00
\$ 300.00
\$ 300.00
\$ 300.00
\$ 300.00
\$ 200.00
\$ 200.00
\$ 200.00

License Fee

\$ 600.00 biennially
\$ 600.00 biennially
\$ 2,200.00 biennially
\$ 2,200.00 biennially
\$ 2,200.00 biennially
\$ 650.00 biennially
\$ 1,700.00 biennially
\$ 1,700.00 biennially
\$ 1,400.00 biennially
\$ 250.00 biennially
\$ 25.00
\$ 25.00
\$ 25.00
\$ 5.00

S.C. -0-
DEPT. OF REVENUE

DEC 07 2015

RECEIVED COLUMBIA
TAXPAYER'S ASSISTANCE

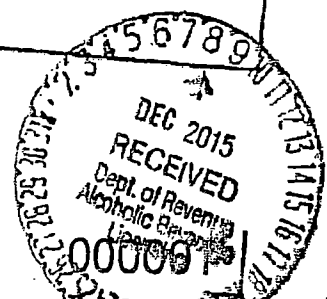
(Certification fee is required, in addition to filing fees, if you are applying for a license at a location that is currently licensed to sell liquor by the drink or retail liquor. 61-617 TAXPAYER'S ASSISTANCE)

PLEASE PRINT OR TYPE ALL INFORMATION

1. OWNER, PARTNERSHIP, OR CORPORATE CHARTER NAME <u>ENVU SATISH KUMAR</u>		5. TRADE NAME (DOING BUSINESS AS) <u>PINEY XPRESS</u>	
2. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX) <u>1001 PINEY WOODS RD.</u> STREET <u>COLUMBIA, RICHLAND, SC. 29210</u> CITY COUNTY (REQUIRED) STATE ZIP		6. BUSINESS PHONE NUMBER <u>843-409-4484</u> DAYTIME PHONE NUMBER	
3. MAILING ADDRESS (FOR ALL CORRESPONDENCE) <u>ENVU SATISH KUMAR</u> IN CARE OF <u>1001 PINEY WOODS RD.</u> STREET <u>COLUMBIA RICHLAND SC 29210</u> CITY COUNTY STATE ZIP		7. SSN/EIN <u>[REDACTED]</u>	
4. TYPE OF OWNERSHIP ☒ SOLE PROPRIETOR (one owner) ☐ PARTNERSHIP (two or more owners) ☐ LLC/LLP ☐ SC CORPORATION DATE INC. _____ ☐ FOREIGN CORPORATION STATE INC. _____ DATE OF INC. _____ ☐ NON-PROFIT ORGANIZATION ☐ OTHER (EXPLAIN) _____		8. NATURE OF BUSINESS <u>CONVENIENCE STORE (RETAIL)</u>	
If the corporation is publicly traded, you must designate an officer or other person to hold the license. This person must be of good moral character, over the age 21, and a SC resident. This person should be included on the Consent and Waiver along with other principals of the corporation. Name of designated officer or other employee: _____		9. WHAT IS YOUR RETAIL SALES TAX NUMBER? <u>118 803 303</u>	
		10. EMAIL ADDRESS <u>Puneet0285@yahoo.com</u>	
		11. IS BUSINESS WITHIN SC MUNICIPAL LIMITS? ☐ YES ☒ NO IF YES, WHICH CITY? _____	

42801035

(21)



11. HAS THIS LOCATION BEEN PREVIOUSLY LICENSED TO SELL BEER, WINE AND/OR ALCOHOLIC LIQUORS?
IF YES PRINT NAME OF BUSINESS AND BEER, WINE AND LIQUOR LICENSE PERMIT NUMBER.

A. PREVIOUS OPERATORS LICENSE NUMBER

B. NAME OF BUSINESS

(Full organization name including trade name)

DESIGNATED AGENT

A. You must designate a person to receive all notices from the Department of Revenue concerning your permit/license. These notices will be sent to the person at the mailing address shown in question 3. It is your responsibility to keep the department advised of any change regarding this person or your mailing address as the law will presume you received all notices sent to the address you have given us.

Name of Designated Agent: SATISH KUMAR

CONTACT PERSON

B. The S.C. State Law Enforcement Division will conduct an investigation on this application, and will need to meet with the contact person at the location for which you are seeking a permit or license, to discuss the business and ownership of the business. Give the name and telephone numbers (daytime and evening) of the contact person who can meet with the SLED agent for this purpose.

Name of Contact Person SATISH KUMAR

Telephone Number 843-409-4484 (daytime)

Telephone Number 843-472-8735 (evening)

If the agent is unable to contact the Contact Person or if the Contact Person cannot discuss the ownership of the business, your application will be delayed.

Processing of this application may take six to eight weeks, or more. If the application is denied by the Department or protested by a member of the public or law enforcement, it could take up to six months or more for a hearing to be held and a decision made on the application by the Administrative Law Court.

If applying for an off-premises beer and wine permit, wholesale beer and wine permit, or 7-day beer and wine permit, I do hereby stipulate that I will not permit the on-premise consumption of beer and wine on the licensed premises. I understand that a violation of this stipulation will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke the beer and wine permit. Nothing herein shall be construed so as to prevent or prohibit "Tastings" in accordance with and as specifically permitted by S.C. Code Ann. Section 61-4-960.

I understand that a misstatement or concealment of fact in an application is sufficient grounds for the revocation of the license or permit. I consent to the inspection of the premises covered by this license or permit by any agent of the SC Department of Revenue or any law enforcement officer.

I have read the instructions to this application and to the best of my knowledge, all information provided with this application is true and accurate.

SWORN to and subscribed before me this

4 day of December, year of 2015

Notary Public for SC

My Commission Expires 12/15/21

Notary (L.S.): [Signature]

Notary (printed name) THEODORE HAYCLIFF

Satish Kumar
Applicant (owner, partner, or corporate officer)

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

42802033

(22)

000002

SATISH KUMAR

Name of Sole Proprietorship, Corporation, Partnership, LLC, etc. FEI/SSN

File
Number:

Name ENL SATISH KUMAR

Home Address 2421 RAMSGATE DR.

City COLLUMIA

State SC

Zip 29210

Yr/Mo/Date of SC Residency 12/12/14

Date of Birth 04/18/59

Social Security No. [REDACTED]

Federal Employer Identification No. [REDACTED]

Principal/Type: (use above #1-12) OWNER

Percent of ownership 100%

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors?

Yes NO No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state?

Yes NO No If yes, attach explanation.

SWORN to and subscribed before me this

41 day of December, year of 2015

Notary Public for SC

My Commission Expires: 12/15/21

Notary (L.S.) [Signature]

Notary (printed name) JOHN W. HARRIS, Notary

This Consent and Waiver shall be effective as of the date set forth on the attached pages until revoked in writing by the ABL-946R completed by the applicant or a principal signing this Consent and Waiver, or until the applicable permit or license is terminated or revoked.

Satish Kumar
Taxpayer's Signature

Name

Home Address

City

State

Zip

Yr/Mo/Date of SC Residency

Date of Birth

Social Security No.

Federal Employer Identification No.

Principal/Type: (use above #1-12)

Percent of ownership

Have you as an individual, or as an organization in which you were a principal, had revoked or suspended in this state or any other state any license to sell beer, wine, or alcoholic liquors?

Yes No If yes, attach explanation.

Have you been convicted of a crime in South Carolina or any other state?

Yes No If yes, attach explanation.

SWORN to and subscribed before me this

____ day of _____, year of _____

Notary Public for _____

My Commission Expires: _____

Notary (L.S.) _____

Notary (printed name) _____

This Consent and Waiver shall be effective as of the date set forth on the attached pages until revoked in writing by the ABL-946R completed by the applicant or a principal signing this Consent and Waiver, or until the applicable permit or license is terminated or revoked.

Taxpayer's Signature

44221024

IF MORE THAN TWO PRINCIPALS, PLEASE SUBMIT AN ADDITIONAL ABL-946

(23)

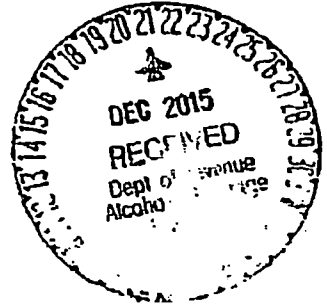
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320716944

SR

**SOUTH CAROLINA DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE LICENSING**

**IN THE MATTER OF THE APPLICATION OF
PINEY XPRESS FOR A PERMIT TO SELL BEER, WINE AT
1001 PINEY WOODS ROAD, COLUMBIA, SC 29210**



**FORMAL NOTICE OF OBJECTION
PURSUANT TO S.C. CODE ANN. §61-4-520**

PLEASE TAKE NOTICE, that the undersigned hereby formally objects and will appear at any hearing held to consider the matter of the above referenced application for permit to sell beer and wine at 1001 Piney Woods Road, Columbia South Carolina, filed by or on behalf of PINEY XPRESS for the following reasons and upon the following legal grounds:

INTRODUCTION

1001 Piney Woods Road is situate within the Pine Grove residential community and has been for approximately the last twelve years a Christian Dance school (ten years) and a house of worship (2 years). Although the property is zoned as neighborhood commercial (NC) the area is overwhelmingly residential with no businesses at all on Piney Woods Road between Broad River Road and Piney Grove Road. Most significantly the premise is situated within 300 feet of private residences and sits within ten feet of multiple dwellings occupied by families with children.

FORMAL OBJECTIONS

**1001 PINEY WOODS ROAD IS BOTH AN IMPROPER AND
UNSUITABLE LOCATION FOR THE SALE OF BEER AND WINE**

It is now settled law that a beer and wine permit is not a contract or a property right – it

is a privilege that is granted by the State to do what would otherwise be unlawful to do.

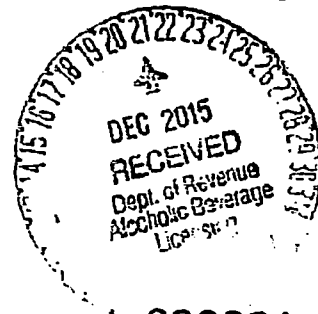
Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E. 2d 22 (1943).

S.C. Code Ann. §§ 61-4-520 and 61-4-540 (Supp. 2005) set forth the requirements for the issuance of a beer and wine permit. In particular, Section 61-4-520(6) vests the Administrative Law Court, as the trier of fact, with the authority to determine if the proposed place of the applicant's business is a "proper" one.

Section 61-4-520(6) provides that in making the determination, the Department, and thus the ALC, "may consider, among other factors, as indications of unsuitable location, the proximity to residences, schools, playgrounds, and churches."

The determination of suitability of location is not necessarily a function solely of geography. It involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the community within which it is to be located. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (1985).

In determining the suitability of a location it is proper for this Court to consider any evidence that demonstrates the adverse effect the proposed location will have on the community. *Palmer v. S.C. Comm'n*, 282 S.C. 246, 317 S.E. 2d 476 (Ct. App. 1984). It is also relevant to consider the previous history of the location. *Smith v. Pratt*, 258 S.C. 504, 189 S.E.2d 301 (1972); *Taylor v. Lewis, et al.*, 261 S.C. 168, 198 S.E. 2d 801 (1973). The strain upon law enforcement's ability to adequately protect the community is a reason to deny a permit. *Moore v. South Carolina Alcoholic Beverage Control Comm'n*, 308 S.C. 160, 417 S.E. 2d 555 (1992).



PROXIMITY TO RESIDENCES, SCHOOLS AND CHURCHES

The location in question is within ten feet of a multiple dwelling occupied by families with children. The location also sits with 300 feet of occupied residential properties on the other side of Piney Woods Road.

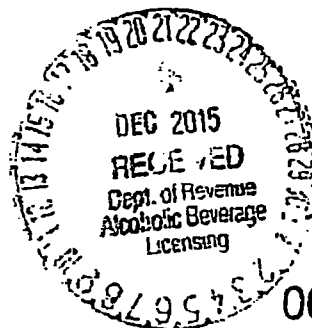
The proposed site is located at 1001 Piney Woods Road. The historic Pine Grove Rosenwald School is at 937 Piney Woods Road and the Pine Grove AME Church. Ironically the premise in question was occupied as place of worship from 2012 to 2014 and a Christian dance school for the ten years immediately prior to that. Upon information and belief no permit to sell beer and wine has been granted at this location for at least 30 years.

THE AREA IS A RESIDENTIAL COMMUNITY

Although the area is zoned as Neighborhood Commercial (NC) there are no commercial establishments on the entire length of Piney Woods Road from Broad River Road. The reality is that the area is residential by virtue of the fact that no commercial activity exists there. Moreover, the absence of other commercial activity in the area has been held to be a negative when evaluating an application for this type of permit. *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 317 S.E.2d 476 (Ct. App. 1984).

POTENTIAL IMPACT ON LAW ENFORCEMENT

A proper consideration for reviewing a beer and wine permit is examining the impact granting the permit will have upon law enforcement. *Moore v. S.C. Alcoholic Beverage Control, Comm'n*, 308 S.C. 167, 417 S.E.2d 555, 55 (1992); *Roche v. S.C. Alcohol Beverage Control Comm'n*, 263 S.C. 451, 211 S.E. 2d 243 (1975).



The proposed location is ten feet from multiple dwellings that, upon information and belief, are frequently visited by law enforcement. The impact of the sale of beer and wine at 1001 Piney Woods Road is likely to increase incidents requiring law enforcement intervention. In addition, the increased traffic and loitering and drug activity that attend convenience store operations citywide can be expected to occur and will negatively impact the quality of life in the surrounding residential neighborhood.

NO OTHER BEER AND WINE PERMITS ARE IN THE IMMEDIATE AREA

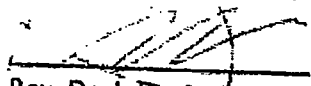
Since there are no other commercial establishments along the length of Piney Woods Road from Broad River Road to Piney Grove Road the proposed location will represent the only beer and wine selling establishment in this wholly residential community.

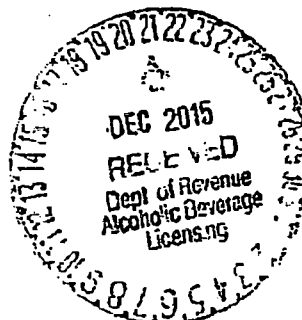
CONCLUSION

For the foregoing reasons I respectfully request that the application of PINEY XPRESS to sell beer and wine at 1001 Piney Woods Road be denied as an improper and unsuitable location for the sale of beer and wine.

Dated: 18 December 2015

Respectfully submitted,


Rev. Dr. Johnnie Zorder
4204 Mandel Drive
Columbia, SC 29210
Tel.: (803)753-8091



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Fnu Satish Kumar, d/b/a Piney Xpress,)
)
)
Petitioner,)
vs.)
)
)
South Carolina Department of Revenue,)
)
)
Respondent.)
_____)

AGENCY INFORMATION SHEET
and NOTICE OF APPEARANCE
Contested Case

DOCKET NO. 16-ALJ-17-0008-CC

1. Identifying information on the matter in controversy (Name and/or title of agency proceeding, statutory provisions giving rise to the controversy, file number or any other identifying information):

Fnu Satish Kumar, d/b/a Piney Xpress
File No. 32071694-PO7
S.C. Code Ann. §§ 61-4-520; 61-4-525

2. Has the agency staff issued a final written decision regarding its action or inaction in this matter?
 X yes no _____ (If yes, please attach a copy.)

See Final Determination dated January 12, 2016.

3. Name, address and telephone number of all known parties and their attorneys, if represented:

Petitioner:

Physical Location

Fnu Satish Kumar
d/b/a Piney Xpress
1001 Piney Woods Rd.
Columbia, SC 29210
843-409-4484

Respondent:

S.C. Department of Revenue
Sarah Khouri
Sean G. Ryan
Milton G. Kimpson
P.O. Box 12265
Columbia, SC 29211
803-898-5177

Mailing Address

Same as location

Attorney for Petitioner:

Kenneth E. Allen, Esquire

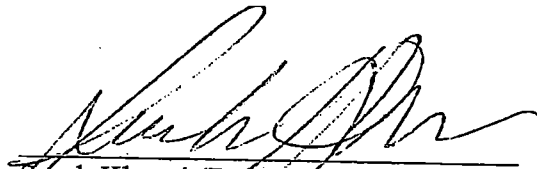
1201 Main St., Ste. 1980
Columbia, SC 29201
803-748-1335

4. Name, address and telephone number of all known persons who have exercised their legal right to object to the issuance of the permit, and who have indicated they will appear at a hearing:

Rev. Dr. Johnnie Cordero
4204 Mandel Dr.
Columbia, SC 29210
803-753-8091

Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned is authorized to and will be representing the above named agency in this matter. Further, by my signature below, I certify that a copy of this information sheet has been served on all parties, and/or protestants (without enclosures) by first class mail on the date shown below.

January 27, 2016



Sarah Khouri (Bar No. 101273)

Counsel for Litigation

Sean G. Ryan (Bar No. 76585)

Managing Counsel for Litigation

Milton G. Kimpson (Bar No. 7917)

General Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211

803-898-5177

Attorneys for S.C. Department of Revenue

Sarah.Khouri@sctax.org

courtorders@dor.sc.gov

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fnu Satish Kumar d/b/a Piney Xpress,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 16-ALJ-17-0008-CC

NOTICE OF HEARING

FILED

FEB 16 2016

SC ADMIN. LAW COURT

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the Request for a Contested Case Hearing filed January 13, 2016.

IT IS HEREBY ORDERED that a hearing on the merits of this action before the undersigned Judge is scheduled to begin at 10:00 a.m. on Tuesday, March 8, 2016, at the **South Carolina Administrative Law Court, 1205 Pendleton Street, Edgar A. Brown Building, Second Floor, Suite 224, Columbia, South Carolina**. All parties are to be present in the courtroom fifteen minutes prior to the hearing so the original of each exhibit the parties intend to introduce into the record at the hearing can be marked by the court reporter. At this time, the parties may also share exhibits and make any necessary copies.

1. This hearing will be conducted in accordance with the Rules of Procedure for the Administrative Law Court, a copy of which is available from the clerk of Court or on the Court's website, www.scale.net.

2. Unless otherwise determined by the undersigned Judge, the hearing will proceed as follows:

- a. Call of the case;
- b. Motions and other preliminary matters;
- c. Stipulations, agreements, or consent orders entered into the record;

(30)

- d. Opening statements, not to exceed ten (10) minutes, with the party requesting the contested hearing proceeding first;
- e. Presentation of evidence (only original documents will come into the record);
- f. Final arguments, not to exceed fifteen (15) minutes, with the party requesting the contested hearing opening and closing.

3. All parties are notified to bring to the hearing all documents, records, and witnesses needed to present the party's case. **All exhibits moved for introduction at the hearing must be originals.** Upon good cause shown at the hearing, copies may be substituted for original exhibits. NOTE: IF SPECIAL EQUIPMENT IS REQUIRED FOR THE PRESENTATION OF EVIDENCE, THE PARTY PRESENTING THE EVIDENCE IS RESPONSIBLE FOR OBTAINING THE EQUIPMENT AND ITS CUSTODY.

4. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (2005) and the rules of the ALC, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for service of subpoenas.

5. A party may represent himself or may be represented by an attorney at the hearing. An attorney representing a party must file a Notice of Appearance within ten (10) days of service of this Notice, unless previously filed with the Court. See ALC Rule 8(B).

6. TAKE NOTICE THAT A FAILURE TO APPEAR AT THE HEARING MAY RESULT IN:

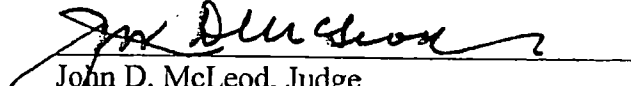
- a. A finding that the party who fails to appear does not object to the relief of which notice has been given;
- b. Dismissal of the case or striking of the pleadings of the party who fails to appear;
- c. Exclusion of evidence proffered by the party who fails to appear; or
- d. Such other rulings as are deemed appropriate by the undersigned judge.

7. **FOR GOOD CAUSE SHOWN**, the parties may request a continuance no later than 24 hours prior to the scheduled hearing date. Failure to timely request a continuance may result in the imposition of court costs and court reporter fees.

8. In the case of settlement or dismissal, failure of the parties to inform the court before the scheduled hearing that the hearing is not necessary may result in the imposition of court costs and court reporter fees against the parties.

AND IT IS SO ORDERED.

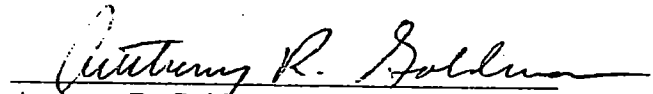
February 10, 2016
Columbia, S.C.


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

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

February 10, 2016
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

DEPARTMENT DETERMINATION

Applicant:

Fnu Satish Kumar
d/b/a Piney Xpress
1001 Piney Woods Rd.
Columbia, SC 29210

File No:

32071694-PO7

Date of Application:

December 7, 2015

Matter in Dispute:

Should the seven day on premises beer and wine permit be denied based on the suitability of the location as alleged in a public protest filed pursuant to S.C. Code Ann. § 61-4-525 (2009)?

Determination:

The South Carolina Department of Revenue (Department) denies the issuance of the seven day on premises beer and wine permit based on the timely filed public protest.

Relevant Facts:

1. On December 7, 2015, the Department received an application for a seven day on premises beer and wine permit from Fnu Satish Kumar, d/b/a Piney Xpress, located at 1001 Piney Woods Rd., Columbia, South Carolina.
2. As a result of the filing of the application, the South Carolina Law Enforcement Division (SLED) conducted a standard investigation of the location to determine compliance with the statutory requirements for licensure.
3. The Department received a valid public protest to the permit from Rev. Dr. Johnnie Cordero on December 21, 2015.
4. Other than the timely filed public protest, the Department determined that the Applicant met all other statutory requirements.

5. The Department denied the issuance of the permit pursuant to a denial letter dated December 31, 2015.
6. The Applicant timely protested the denial of the permit pursuant to a letter received by the Department on January 5, 2016.

Analysis:

A contested case hearing is necessary since a timely public protest has been filed with the Department.

Section 61-4-525 and S.C. Code Ann. Regs. 7-201 (Supp. 2011) allow the public to submit written protest to the Department against the issuance of an on premises beer and wine permit if the Protestant complies with the requirements of the statute in rendering the protest. Further, the Protestant must express the intent to attend a contested case hearing and must reside in the same county as the location or within five miles of the location.

Specifically, § 61-4-525 provides:

(A) A person residing in the county in which a beer and wine permit is requested to be granted, or a person residing within five miles of the location for which a retail beer and wine permit is requested, may protest the issuance or renewal of the permit if he files a written protest setting forth:

(1) the name, address, and telephone number of the person filing the protest;

(2) the name of the applicant for the permit and the address of the premises sought to be licensed, or the name and address of the permit holder if the application is for renewal;

(3) the specific reasons why the application should be denied; and

(4) whether or not he wishes to attend a contested case hearing before the Administrative Law Court.

(B) Upon receipt of a timely filed protest, the department shall determine the protestant's intent to attend a contested case hearing before the Administrative Law Court. If the protestant intends to attend a contested hearing, the department may not issue the permanent permit but shall forward the file to the Administrative Law Court.

(C) If the protestant, during the investigation expresses no desire to attend a contested hearing and oner

testimony, the protest is deemed invalid, and the department shall continue to process the application and shall issue the permit if all other statutory requirements are met.

(D) A person who files a protest and fails to appear at a hearing after affirming a desire to attend the hearing may be assessed a fine or penalty to include court costs.

The Department received a timely filed protest from Rev. Dr. Johnnie Cordero on December 21, 2015. Except for determining that the statutory requirements for protest have been met, the Department does not have the authority to issue the permit over the objection of public protest; rather, this matter must be heard by the Administrative Law Court. Other than the question of the suitability of location as stated in the public protest the Department has found that the Applicant has met all other statutory requirements for licensure. Accordingly, based on the protest, the Department may not issue the permit pursuant to the mandates of § 61-4-525.

Conclusion:

If you agree with this Department Determination, please withdraw (in writing) your application within thirty days of the date of this Determination. If you disagree, please appeal the Determination within such thirty day period as noted on the attached cover letter.

January 12, 2016