

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

**RECEIVED**

Ralph King Anderson, III, Chief Administrative Law Judge

DEC 22 2015

**SC Court of Appeals**

Appellate Case No. 2015-000733

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

v.

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

**FINAL REPLY BRIEF OF APPELLANT TO BRIEF OF  
SOUTH CAROLINA DEPARTMENT OF REVENUE**

S. Jahue Moore, SC Bar #4063  
John C. Bradley, Jr., SC Bar #7869  
MOORE TAYLOR LAW FIRM, P.A.  
1700 Sunset Boulevard  
West Columbia, SC 29169  
803-796-9160  
803-791-8410 (Fax)  
[john@mttlaw.com](mailto:john@mttlaw.com)

Kenneth E. Allen  
KEN ALLEN ATTORNEY  
1201 Main Street, Ste. 1980  
Columbia, SC 29201  
803-748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals,

---

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

---

Appellate Case No. 2015-000733

---

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

v.

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

---

**FINAL REPLY BRIEF OF APPELLANT TO BRIEF OF  
SOUTH CAROLINA DEPARTMENT OF REVENUE**

---

S. Jahue Moore, SC Bar #4063  
John C. Bradley, Jr., SC Bar #7869  
MOORE TAYLOR LAW FIRM, P.A.  
1700 Sunset Boulevard  
West Columbia, SC 29169  
803-796-9160  
803-791-8410 (Fax)  
[john@mttlaw.com](mailto:john@mttlaw.com)

Kenneth E. Allen  
KEN ALLEN ATTORNEY  
1201 Main Street, Ste. 1980  
Columbia, SC 29201  
803-748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)

Attorneys for Appellant

**TABLE OF CONTENTS**

Table of Authorities .....ii

Discussion of Law.....1

    I. The Administrative Law Court’s Order Contains  
        Numerous Errors of Law .....1

        A. The Trial Court Applied the Incorrect Standard .....1

        B. The Trial Court’s Order Is Not Supported by the Evidence  
            Presented at Trial .....2

        C. The Appellant Did Not Waive the Issues of Deprivation of a  
            Vested Interest and Violation of Its Constitutional Rights .....3

Conclusion .....3

**TABLE OF AUTHORITIES**

**Cases**

*Byers v. South Carolina Alcoholic Beverage Control Commission*,  
281 S.C. 566, 316 S.E.2d 705 (1984) ..... 1

*Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973)..... 1

## DISCUSSION OF LAW

As has been the case throughout this matter, Respondent South Carolina Department of Revenue (“SCDOR”) takes the position that Appellant met the statutory requirements for its permit renewal. (South Carolina Department of Revenue’s Initial Brief, Page 6). The Department takes the position that because of the public protests filed with the Department, the determination as to whether Appellant should be granted its renewal rests solely with the Administrative Law Court. Respondent SCDOR then argues that the Administrative Law Court’s Order is supported by the substantial evidence in this case and further that there are no errors of law and should be affirmed. This argument ignores the arguments raised by Appellant in its Brief.

### **I. THE ADMINISTRATIVE LAW COURT’S ORDER CONTAINS NUMEROUS ERRORS OF LAW**

Contrary to the argument of Respondent SCDOR, the Administrative Law Court’s Order(s) contain numerous errors of law and is not supported by the evidence presented at the hearing.

#### **A. The Trial Court Applied the Incorrect Standard.**

The Final Orders and Decisions of the Administrative Law Judge, as well as his Order denying Appellant's post-hearing motions, are based on a misinterpretation and misapplication of the applicable South Carolina Law. As argued in Appellant’s Brief, the Administrative Law Court treated this matter as it would a first time permit request and not as the renewal that it was. *Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973), *Byers v. South Carolina Alcoholic Beverage Control Commission*, 281 S.C. 566, 316 S.E.2d 705 (1984). The application of this incorrect standard constitutes an error of law and warrants reversal by this Court.

**B. The Trial Court's Order Is Not Supported by the Evidence Presented at Trial.**

Even if the Trial Judge applied the correct standard in this case (which Appellant denies) the overwhelming evidence in this case does not support a denial of the renewal of Appellant's off premises beer and wine permit. Judge Anderson's Order and the Respondent SCDOR argue that the single incident where one of Appellant's employees sold alcohol to a minor, and the manner in which it was handled by Appellant, support the Order denying Appellant's permit. The evidence presented at trial establishes that Appellant did in fact deal with this issue. (R. pp. 106, l. 25 – 107, l. 17; 124, l. 22 - 125, l. 11.) And while the Court and Respondent take issue with the way it was handled, there have been no other instances of violations.

The Court and Respondent SCDOR also cited the fact that calls to the police had increased and that Appellant's business has created an undue burden on law enforcement. As set forth in Appellant's Brief, this finding and this argument are not supported by the evidence presented to Judge Anderson at trial. Further, it is clear that the Respondents, particularly the Interveners, are attempting to make the Appellant the "scapegoat" for all of the neighborhood's problems involving loitering, litter and crime. The Court's Order (and the arguments of Respondent) ignore the fact that Appellant's business is located on a busy thoroughfare, and that there are other businesses located adjacent and close to the Appellant who sell alcohol for off premises consumption. Further, much of the loitering complained of and cited by Respondents occurs on adjacent property and not property owned or controlled by the Appellant. The evidence presented at trial does not support the harsh penalty imposed on the Appellant in this case. The Court's Order should be reversed.

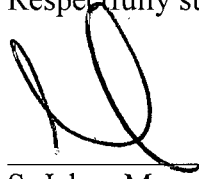
**C. The Appellant Did Not Waive the Issues of Deprivation of a Vested Interest and Violation of Its Constitutional Rights.**

The Respondent SCDOR argues that the Appellant waived the issues of deprivation of its vested interests and violation of its Constitutional Rights by not raising them before the Administrative Law Judge. This argument lacks merit. While a Rule 59(e) Motion cannot be used to raise issues that could have been raised at trial, in the present case Appellant did not know that these rights were going to be or were actually violated until it received a copy of the Administrative Law Court's Order containing numerous errors of law, including the application of an incorrect standard to the facts of this case. As soon as the Appellant was made aware that its rights had been violated as the result of the Trial Court's Order, it timely raised this issue in its Rule 59(e) Motion for Reconsideration. (R. pp. 53-61.) The cases cited by Respondent SCDOR are not controlling. These issues are properly before this Court.

**CONCLUSION**

For the reasons set forth above, this Court should reject the arguments of Respondent SCDOR and should reverse the judgment of the Administrative Law Court Judge denying the Appellant's application for a renewal of its off premises beer and wine license.

Respectfully submitted,



By:

---

S. Jahue Moore, SC Bar #4063  
John C. Bradley, Jr., SC Bar #7869  
MOORE TAYLOR LAW FIRM, P.A.  
1700 Sunset Boulevard  
West Columbia, SC 29169  
803-796-9160  
803-791-8410 (Fax)  
[john@mttlaw.com](mailto:john@mttlaw.com)

Kenneth E. Allen  
KEN ALLEN ATTORNEY  
1201 Main Street, Ste. 1980  
Columbia, SC 29201  
803-748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)

Attorneys for Appellant

West Columbia, SC

December 22, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

**DEC 22 2015**

**SC Court of Appeals**

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

---

Appellate Case No. 2015-000733

---

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

v.

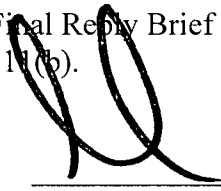
South Carolina Department of Revenue, Ellen Fishburne Triplett,  
Keith McIver, Samuel L. Munson, Jocelyn Munson, and Michael Hill,..... Respondents.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that the Final Reply Brief of Appellant to Brief of Respondent SCDOR complies with Rule 211(b).



---

S. Jahue Moore  
John C. Bradley, Jr.  
MOORE TAYLOR LAW FIRM, PA  
1700 Sunset Boulevard  
PO Box 5709  
West Columbia, SC 29171  
(803) 796-9160

Kenneth E. Allen  
1201 Main Street, Ste 1980  
Columbia, SC 29201  
(803) 748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)  
Attorneys for the Appellant

West Columbia, South Carolina  
December 22, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

DEC 22 2015

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2015-000733

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

v.

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

**PROOF OF SERVICE**

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that I have served the Appellant's Final Reply Brief to Brief of Respondent South Carolina Department of Revenue by mail, to the following parties by depositing a copy of same in the United States Mail, postage prepaid, on December 22, 2015 addressed as follows:

Justine M. Tate, Esquire  
Sean Ryan, Esquire  
SC Department of Revenue  
P.O. Box 12265  
Columbia, SC 29211

Patrick C. Sharpe, Esquire  
City of Columbia  
P.O. Box 667  
Columbia, SC 29202

Kathleen McDaniel, Esquire  
Callison Tighe & Robinson, LLC  
PO Box 1390  
Columbia, SC 29202-1390

  
Lynn G. Ivey

West Columbia, South Carolina  
December 22, 2015