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VIA HAND-DELIVERY

May 11, 2018

The Honorable Deborah Brooks Durden  
South Carolina Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

*Re: Five Points Roost, LLC v. South Carolina  
Department of Revenue  
Case Number: 18-ALJ-0005-CC  
Our File number: 2176157*

Dear Judge. Durden:

As the Court is aware, we filed a timely motion for reconsideration in this matter. Although we ordered a transcript, the Court Reporter did not provide us the transcript until after the date our Motion was due. (Due to numerous delays, we received the transcript on May 3, 2018) Included herewith is an electronic copy of the transcript on a flash drive. In further support of our motion for reconsideration, I have included several relevant excerpts that support the reconsideration of specific findings of fact articulated in the Order.

We are aware that just as we did not have access to the transcript in preparing our motion for reconsideration, the Court prepared the Order without access to the transcript. We believe that a complete review of the transcript and review of the lack of substantiation for the findings upon which the denial of the license was made should lead the Court to entirely reconsider its decision and issue an order that the Department of Revenue issue the licenses to our client.

A thorough review of the record reveals that there are some findings made in the Order which are wholly unsupported in the record. Moreover, when considering other factors, the record in its entirety does not support the denial of the license. We are not providing this letter to re-argue our motion for reconsideration, and fully adopt the arguments and law therein. We are providing this letter to the Court to supplement that motion with support from the record of the proceedings.

We would like to first address the findings about the suitability of the location. As the Court should be aware from reading our brief, significant considerations in the law are relating to the effect of the proposed business on law enforcement. We argued that the consideration of the past should not have been persuasive. Moreover, the record lacks any finding that operations

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at Five Points Roost, in fact, had any adverse effect on the area or the neighborhood. That alone should be a primary basis for the reconsideration of the Court's decision. There is no evidence that petitioners have had any involvement with law enforcement during the period of their temporary licenses. Finally, an analysis of the record reveals that the findings inflated the unreliable evidence in the record and therefore were based upon evidence which was not reliable.

For example, the Court found as a fact that: "William Holbrook, Columbia Chief of Police, testified that there have been 623 arrest or citations issued at this specific location over the past ten years by the Columbia Police Department."

First, Chief Holbrook never testified to that exact number<sup>1</sup>. On Direct he discussed calls for service. He stated:

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 243:12 to 246:23)

243

12 Q: Now, did you at some point prior to April begin  
13 a process that ended up with, culminated with  
14 you filing a petition to declare it a nuisance?

15 A: We did.

16 Q: When did that begin?

17 A: We were beginning, probably about a couple of  
18 years ago we began pretty comprehensive revue  
19 of all the calls for service for bars that we  
20 felt like were inconsistent with our  
21 expectations of just safety and quality of life  
22 in that particular area we started compiling  
23 notebooks when we would have a call -- call for  
24 service or a serious incident that was  
25 documented in a report and we would maintain

244

1 those notebooks in the region office.

2 Q: What's a call for service, what does that mean?

3 A: Officers receive a call over their radio where  
4 a crime is being reported or a disturbance or  
5 it was something that they would observe first  
6 hand.

7 Q: And -- and did you put together numbers, I'm  
8 not talking about the specific establishment,  
9 but it's located at 800 Harden Street which  
10 would be the corner of Harden and Greene,  
11 correct?

12 A: Correct.

13 Q: And did you receive -- have you looked at  
14 numbers on how many calls for service over a  
15 one year period back when you were doing this  
16 research?

17 A: Well, I don't -- I couldn't tell you over a one

<sup>1</sup> On cross examination, at one point he argued that number, but a review of his testimony reveals that it must have been the result of confusion.

18 year period, I, we looked at over a ten year  
19 period ---

20 Q: Okay.

21 A: --- at that particular area.

22 Q: Okay.

23 A: It was over 600 calls for service.

24 Q: 600 calls for service, is that high for a  
25 specific geographic?

245

1 A: It seemed to be very high to me.

2 Q: Okay. Did you record any specific criminal  
3 conduct at the Pour House, inside 800 did you  
4 have any involvement in criminal activity  
5 there?

6 A: We did.

7 Q: And over what period of time and how many?

8 A: So when -- when we began more of a  
9 comprehensive review for the Pour House in  
10 particular we found focused on when the  
11 business, the last business license was awarded  
12 in 2016 we focused on that period of time up  
13 and to the event where the individuals  
14 seriously assaulted in front of the Pour House.

15 Q: And you're speaking of the incidence on Saint  
16 Patrick's Day which I think we've all seen on  
17 television where Mr. Wells was accused of  
18 breaking the jaw of a patron of his bar, is  
19 that correct?

20 A: That's correct.

21 Q: I'm not saying whether it was justified, these  
22 are the charges, but I'm not saying whether  
23 that was justified or unjustified, but that was  
24 the -- somebody signed -- signed a warrant for  
25 him, right?

246

1 A: Yes, sir.

2 Q: And he was arrested?

3 A: Yes, sir.

4 Q: But you had how many instances there  
5 culminating with that?

6 A: We -- we had 23 calls for service that resulted  
7 in a report being made and some type of action  
8 taken.

9 Q: And that's not just a I need a ride home or  
10 there's this drunk girl it's a, there's a --  
11 there's got to be some sort of criminal  
12 activity.

13 A: The majority were fights and assaults.

14 Q: Fights and assaults in the bar or outside, just

15 outside the bar?  
16 A: In the bar, something that again these -- these  
17 23 incidents were incidents that we attributed  
18 specifically to the bar through investigation.  
19 There is numerous more calls for service, but  
20 we -- we really aired on -- on the side of  
21 caution in our investigation to do our due  
22 diligence, we focused on those 23 specific  
23 incidents.

So rather than the 623 items mentioned in the Court's finding of fact, the Chief testified that there were 23 calls for service. That is far different from what the Court found. Moreover, he testified that the information was hearsay, no records were admitted to support that hearsay and make it subject to an applicable exception and that there was a question of reliability in the data as it required a person to make a decision to classify it.

CROSS EXAMINATION OF CHIEF HOLBROOK BY MR. MONTGOMERY- Vol. I, (Pages 256:18 to 258:22)

256

18 How many incidents do you know of occurred  
19 there in 2017?

20 A: I don't know off the top of my head.

21 Q: Okay. And did you personally prepare any of  
22 the documents or give you the numbers or was  
23 that done for you?

24 A: That was done for me.

25 Q: So what you're testifying to is what someone  
257

1 told you or provided?

2 A: Correct.

3 Q: And any report you have that's written up is  
4 often based upon again, what someone told your  
5 officer unless the officer's there in their own  
6 presence, isn't it?

7 A: That's correct.

8 Q: So there's a certain issue of reliability  
9 that's inherent in every one of those reports,  
10 isn't it?

11 A: Sure.

12 Q: And do you know on an annual basis when you  
13 talk about 600 calls for service over the  
14 course of that ten years, do you know on an  
15 annual basis what those numbers were?

16 A: I'm not sure I understand what you're asking.

17 Q: Well, do you know in any given year what the  
18 number was rather than this aggregate 600  
19 number?

20 A: Not off the top of my head I don't.

21 Q: Okay. And would it be important if you were  
22 looking at the effect of a location to look at  
23 what happened in any given year so you could  
24 say who was running it and what they were doing  
25 there?

258

1 A: Specific to a location?

2 Q: Yes, sir.

3 A: Sure, you would look at trends.

Chief Holbrook had no idea of the number of incidents or the trend in incidents in Five Points over the last three years.

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 263:15 to 264:12)

263

15 Q: Okay. Have your -- what's your incident count  
16 down there over the last three years? You  
17 don't know that?

18 A: I don't have any idea.

19 Q: Okay. Do you know if your officers -- what  
20 establishments your officers are welcome in and  
21 what establishments don't like them to come in?

22 A: I couldn't tell you that.

23 Q: Do they know?

24 A: I'm sure they would have an opinion.

25 Q: Do they report any of that opinion to you?

264

1 A: I'm not aware of any particular establishment  
2 that's more officer friendly than another one.

3 Q: Okay. And that's because no one's expressed  
4 that to you or you haven't inquired or what's  
5 the basis for that?

6 A: Bases is I don't know of an establishment that  
7 has a reputation for that or not.

8 Q: Okay. And what have you undertaken if anything  
9 to learn about what establishment might have a  
10 reputation or not, anything in particular?

11 A: Just what I previously stated, what's reported  
12 to me.

While Chief Holbrook testified that there have been 600 incidents reported in the 800 block of Harden Street over the last ten years, he noted that citywide that there are about 165,000 calls for service each year.

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Page 254:15 to 254:17)

254

15 Q: Chief, how many calls for service do you have

16 in the City of Columbia on an annual basis?  
17 A: About 165,000.

2. The Court also found that Chief Holbrook testified that the prior establishment at the location had been declared a nuisance. His testimony reveals that it, in fact, was not.

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 242:22 to 243:15)

242

22 kay. Now, you have looked at some statistics  
23 and -- well, first of all did you undertake  
24 some action, official action against the Pour  
25 House at some point?

243

1 A: Yes, sir.  
2 Q: And when was that?  
3 A: In March of 2000 -- or excuse me, in, we took  
4 official action in April of 2017.  
5 Q: When had -- when had you begun -- and when you  
6 say official action, you sought to declare it  
7 a nuisance; is that correct?  
8 A: That's correct.  
9 Q: Which would eliminate the business license; is  
10 that correct?  
11 A: That's correct.  
12 Q: Now, did you at some point prior to April begin  
13 a process that ended up with, culminated with  
14 you filing a petition to declare it a nuisance?  
15 A: We did.

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 246:24 to 248:4)

246

24 Okay. And after you did that did you file and  
25 I'm not sure if you actually are the decider on

247

1 it, public nuisance statute on the business  
2 license, is that correct?  
3 A: Yes, sir.  
4 Q: And I guess there's some sort of new process  
5 involved and you notified Mr. Wells -- that's  
6 Mr. Wells back there (indicating), do you

98 7 remember him?

8 A: I do.  
9 Q: Okay. Did you notice Mr. Wells that you were  
10 going to declare him a nuisance?  
11 A: We did.  
12 Q: And did he -- did you afford him a hearing?  
13 A: We did.

- 
- 14 Q: Did he come to the hearing?  
15 A: Yes, sir.  
16 Q: And did you complete the hearing?  
17 A: We did.  
18 Q: And what was the result?  
19 A: They agreed to surrender their business license  
20 ---  
21 Q: They, Mr. Wells?  
22 A: --- Mr. Wells and his attorney agreed, provide  
23 a specific date to surrender that license, we  
24 agreed to those terms.  
25 Q: Do you remember when that was, what the date  
248  
1 was?  
2 A: The date of surrender was May 22nd of 2017.

3. There is no testimony in the record to support the Court's findings regarding the incident for which Wells is currently facing criminal charges. While the Court found (apparently from Mr. Harpootlian's argument) that the incident occurred in February 2016, the only incident involving Mr. Wells occurred March 19, 2017. *The record is bereft of any testimony or exhibit to support this finding.*

4. Likewise, without apparent support in the record, the Court found that "Ruonala is a longtime friend of Wells' with no previous relationship to Bland prior to this business venture undertaking." There is no support whatsoever for this conclusion in the Record. *This appears to be another finding based upon Mr. Harpootlian's opening statement. The record reflects that Mr. Ruonala became involved in the business:*

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 154:22 to 155:2)

- 154  
22 Q: How did you get involved in the purchase or the  
23 group that was purchasing the Roost?  
24 A: Well, yet another unforeseen set of  
25 circumstances. I got a call from Stephen Bland  
155  
1 who told me about the opportunity that had  
2 arisen.

The only evidence in the record reflects that Bland contacted Ruonala about the opportunity - obviously he and Bland had some sort of relationship. There is no evidence to support a finding of fact that Bland and Ruonala had "no previous relationship."

5. The Court also appears to have made the following findings of fact without any evidence supporting them in the record. The Court held:

The lack of value given in exchange for Brenda Wells' significant ownership interest in the business is the predominant fact that leads me to find that Daniel Wells is an undisclosed principal of Five Points Roost, LLC. Other relevant facts that suggest that Wells is actually exercising control over the business include:

- The longstanding personal relationships between Daniel Wells and both Bland and Ruonala and the lack of prior relationship between the two men who purport to be managing the business together."

As previously referenced, the only evidence in the record leads to the conclusion that Mr. Bland and Mr. Ruonala were acquainted and had a previous relationship. Moreover, while Intervenors argue that the business generates huge revenues, there is no evidence that there was not value conveyed for the interest that Brenda Wells' LLC received. Ruonala himself testified that he evaluated and was comfortable with the consideration paid:

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Page 167:9 to 167:19)

167

9 So I had talked to him, we assessed  
10 the value, and to be honest, Mr. Wells made it  
11 very clear that -- that he had debt from Ms.  
12 Wells and that one of the deciding factors in  
13 moving forward would be that he -- that he was  
14 able to relieve her of that debt however way.  
15 We were not willing to go find that kind of  
16 cash. I was not willing to assume his loan,  
17 what we were willing to do is give her equity  
18 with the opportunity to buy it back. That would  
19 kind of kill two birds with one stone.

No expert testimony was offered as to value and it is error for the Court to attempt to substitute its judgment as to value for one of the parties. A party in South Carolina can testify about the value of his or her own assets. No evidence, aside from argument from Counsel was offered in opposition to the valuation presented by Petitioners.

6. "The Court also found as a matter of fact that: "The only plausible explanation is that Daniel Wells is still controlling the business and has simply reorganized it and transferred his majority ownership interest into an LLC controlled by his mother."

*There is not a single bit of testimony or evidence in the record to support this contention. No document was offered that indicated Mr. Wells had any involvement in the business and no testimony was adduced to that effect. The only mention in the record comes from Mr. Harpoottian's opening statement.*

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 22:16 to 23:2)

22

16 but you're going to see, and it's in the  
17 document already filed, that -- and as I  
18 understand Mr. Bland's testimony, that the  
19 majority 60 something percent of the entity  
20 that runs -- that owns Five Points Roost, LLC,  
21 is owned by -- is Mr. -- where's Mr. Wells, oh,  
22 there he is right there (indicating), Mr.  
23 Wells, a former owner's mother and -- and if  
24 this sounds confusing to you, I encourage you  
25 to ask the witnesses whether it's Mr. Ruonala

23

1 or whether it's Mr. Bland, and Mr. Ruonala owns  
2 a very small portion,

7. The Court also concluded as a matter of fact that: "However, that testimony is insufficient to convince that if the permit or license were issued, those practices would be faithfully observed or, if observed, they would be effective in identifying all of the false identification cards. Bland testified that if all the resources available were collectively used, they would have "a really good chance of catching fake IDs." I find it improbable that while 200 people wait in line outside the bar, a doorman would scan every single ID with a black light, a separate second scanner, and reference it in a guidebook before allowing a patron to enter. Thus, I find that if the permit and license were issued the business would contribute to the problem of underage drinking in Five Points.

*Once again there was no evidence presented at the hearing that implied Stephen Bland or Adam Ruonala would not continue with the practices they had laid out. The Court had an option to impose that as a requirement or condition for licensing. The Court made an improper finding about a potential future occurrence. This is not based on any evidence in the record. The only evidence in their record -- and neither the intervenors nor the Respondent offered testimony or evidence to the contrary, was that these practices were faithfully adhered to. To the contrary, the evidence in the record reflects that Five Points Roost has not been cited or had any incidents or violations since opening the Five Points Roost.*

8. The Court also found that Chief Holbrook testified that this location, and Five Points generally, have required an extraordinary amount of police service and have been a constant source of law enforcement problems. He attributes the strain on police services in part to the concentration of bars in a small area. I find that the proposed location has a reputation for lawless behavior under previous management and that granting the license and permit sought here would likely exacerbate and perpetuate the problems with public intoxication and the existing strain on law enforcement resources." On page 11 the same Law Enforcement Resources issues were

addressed in the same manner stating that, "this location in particular, have been constant and significant strain on law enforcement resources to the point that the location was declared a nuisance.

*Please refer to the hearing transcript and this is not what Chief Holbrook stated in his testimony.*

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I. (Pages 252:3 to 259:12)

252

- 3 Q: Okay. Have you had any calls or police  
4 presence required there since they reopened.  
5 A: We -- we have a police presence there Thursday  
6 through Saturday consistently and throughout  
7 Five Points. I'm not aware of any calls for  
8 service at that specific location.  
9 Q: Are you aware of any incidents or other  
10 problems that have occurred there since the  
11 time that it's been reopened.  
12 A: No, sir, I'm not.  
13 Q: Are you acquainted with Mr. Ruonala?  
14 A: No.  
15 Q: Are you acquainted with Mr. Bland?  
16 A: No.  
17 Q: Okay. Now, prior to coming to testify today  
18 it's true you met with Mr. Harpootlian and  
19 you've met with the protestors?  
20 A: Yes.  
21 Q: What did you discuss in that meeting?  
22 A: Exactly what we discussed today.  
23 Q: Did you just plan your testimony?  
24 A: Did I what?  
25 Q: Did you just plan your testimony?

253

- 1 A: No. I answered their questions.  
2 Q: Okay. And when you did that did you provide  
3 any documents in response to this subpoena?  
4 A: Just the FOIA documents.  
5 Q: And -- and what were those?  
6 A: Calls for service over the last ten years.  
7 Q: Okay. And did you do any summaries of those  
8 calls for services?  
9 A: No, sir.  
10 Q: Did you look at them on a year -- a yearly  
11 basis to see when they occur?  
12 A: No, sir.  
13 Q: Would you be surprised to know that if you  
14 looked at them on a yearly basis there's some  
15 interesting trends?

9. On page 7 of the Order, the Court found that: Petitioner does not claim that it intends to operate a restaurant at the location and the same type of reference is made on page 12 of the Order, apparently again based solely on Mr. Harpoolitian's dramatic allusions in this opening statement. The Court found that, "In light of all the evidence, however, I conclude that even if Petitioner makes the operational improvements it has promised, it is likely that the bar it plans to operate would continue to contribute to and encourage the late- night revelry of underage USC students and the illegal and obnoxious behavior that ensues."

*The only evidence in the record indicates that Petitioners are earnestly engaged "primarily and substantially" in the preparation and service of meals as provided by statute. The DOR confirmed that Petitioner met all of the statutory criteria. There is extensive testimony about food service in the record. The record is void of any evidence to contradict the fact that these parties meet the statutory requirements. It appears, that rather than applying the facts of the case to the law, the Court adopted Mr. Harpoolitian's unsubstantiated arguments.*

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 19:16 to 20:4)- Mr. Harpoolitians Opening Statement.

19

16 And, you know, here's the  
17 problem, the problem is DOR comes in and sees  
18 if they've got a stove, and apparently a  
19 microwave is a stove. You know, I'm not sure  
20 I would agree with that, but that's not what  
21 we're going to deal with today. They come in  
22 and say because they have a refrigerator --  
23 it's supposed to have 7 cubic feet, I don't see  
24 that measured anywhere, but that's the issue  
25 here today. Food preparation, separate area,

20

1 they have a cutting board and an ice machine,  
2 whether or not that's a kitchen that complies  
3 with the statute and the regs, that's not the  
4 issue here today.

and

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Page 25:20 to 25:24)- Mr. Harpoolitians Opening Statement.

25

20 And -- and the  
21 last point is this, they're not a restaurant.  
22 They are a bar, they are not serving food, and  
23 I don't care what they plan to do in the  
24 future.

10. On page 10 of the Order, the Court found that: "This is especially true in light of the fact that Petitioner's business model is a bar intended to attract and serve students and young adults."

*Nowhere in the record did Mr. Ruonala or Mr. Bland reference that their business model intended to only attract and serve students and young adults.*

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Page 20:5 to 20:12)-Mr. Harpootlian's Opening Statement.

20

5 These are people making a million dollars a  
6 year pouring liquor and -- and, you know, I  
7 understand there's some dispute about whether  
8 it's to underage kids or not, we're going to  
9 have some witnesses about that. I understand  
10 that the -- that the -- the issue is not  
11 whether they're attractive nuisance for kids  
12 to come down from the university and get drunk.

11. On page 15 of the Order the Court found, "Petitioner presented testimony that it meets the minimal requirements defined in the statute, while simultaneously acknowledging that its business is a bar, is not equipped to cook meals from scratch, and that the overwhelming emphasis of its business is to be the sale of beer, wine and liquor and on page 16, the Court concluded, "I must conclude that Petitioner fails to meet the requirements of the statute. The proposed location does not have an oven or a stove other than a microwave, and there is no evidence that menus are provided to customers."

The evidence in the record does not support these conclusions. Mr. Bland testified this during the hearing:

FIVE POINTS ROOST, LLC V. SC DOR, ET AL - Vol. I, (Pages 49:17 to 50:4)-  
Stephen Bland's testimony about the kitchen.

49

17 Q: Now, do you have to your knowledge, a kitchen  
18 that allows you to serve enough food in this  
19 instance?

20 A: Our kitchen is limited, but it is -- everything  
21 in there is DHEC approved. In order to -- to  
22 get it to where we would be actually do full  
23 prep -- full cooking, it would be -- it would  
24 be a significant investment for the property.

25 Q: Okay. Now, do you have a rating from DHEC for

50

- 
- 1 your restaurant operation?  
2 A: Yes, sir.  
3 Q: And what is that rating?  
4 A: That's an A.

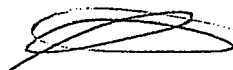
The remaining findings of fact and conclusions of law ought to also be reviewed in light of the actual testimony and evidence in the record. Again, we believe that a thorough review of the transcript will aid the Court in reviewing our Motion for Reconsideration and ought to result in a revision of the Court's decision and the Order to issue the licenses.

If you have any questions or concerns, please do not hesitate to contact our office. I am providing all counsel of record a copy of this letter.

With kind regards, I am

Many Thanks,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery

Enclosures  
cc: Patrick A. McCabe, Esquire  
Sean G. Ryan, Esquire  
Jason P. Luther, Esquire  
Elisabeth W. Shields, Esquire  
Richard A. Harpootlian, Esquire