

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

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Deborah Brooks Durden, Administrative Law Judge

JUN 04 2018

SC Court of Appeals

NO. 17-ALJ-17-0466-CC

South Carolina Department of Revenue..... Respondent,

v.

The Venture Grouping, LLC d/b/a Zen Ultra Lounge..... Appellant.

INITIAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

1. Did the Appellant timely file its request for a contested case hearing before the Administrative Law Court pursuant to S.C. Code §12-60-1320.

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STATEMENT

The Appellant applied for an alcohol licensing permit through the Department of Revenue and on November 6, 2017, the Respondent issued a termination letter to the Appellant in which the Respondent denied Appellant's application for an on premise beer and wine permit and a restaurant liquor by the drink license. The Appellant filed its request pursuant to §12-60-1320 of the S.C. Code of Laws on December 8, 2017, requesting a contested case hearing. The Administrative Law Court found that the deadline to file a request for a contested case hearing and serve the Respondent was December 6, 2017, thirty (30) days from the date of the letter that was issued by the Respondent.

ARGUMENT

Did the Appellant timely file its request for a contested case hearing before the Administrative Law Court pursuant to S.C. Code §12-60-1320.

In appeals from the Administrative Law Court, this court has the authority to find facts in accordance with its own view of the preponderance of the evidence. S.C. Code Ann. §123-610(b) (Supp. 2017) allowing the Court of Appeals to reverse or remand the Administrative Law Court's decision if it is based on error of law or abusive discretion. *Al-Shabazz v State*, 338 S.C. 354, 527 S.E.2nd 742 (2000)

The S. C. Administrative Court is authorized to preside over contested cases governing alcoholic beverages including beer, wine and liquor. S.C. Code §1-23-600 (Supp. 2017) and §61-2-260 (Supp. 2017). §12-60-1330 provides that a person may contest a Department determination by requesting a contested case hearing before the Administrative Law Court within thirty (30) days after the date the Department's determination was sent by first class mail or delivered to the person. Request for a hearing before the Administrative Law Court must be made in accordance with its Rules. S.C. Code §12-60-1320. Moreover, §1-23-600(b) states "all requests for a hearing before the Administrative Law Court must be filed in accordance with the Courts rules of procedure". Rule 3(c) of the S.C. Administrative Law Court Rules states:

"Whenever a party has a right or is required to do some act or take some preceding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him

by mail, by e-mail, or upon a person designated by statute to accept service, five (5) days shall be added to the prescribed period.”

It is clear that §12-60-1324 that notice is being provided to the Appellant and the Rule contemplates that notice is being served upon the Appellant by first class mail. The legislature clearly intended for it to be an actual thirty (30) day notice period to the Appellant to file any type of appropriate response.

CONCLUSION

The Appellant filed its notice for request for a contested case hearing within the allotted thirty (30) day notice period pursuant to Rule 3(c) of the S.C. Administrative Court Rules and the Administrative Law Court's decision should be overturned and the Appellant's contested case should be allowed to continue.

Respectfully submitted,

By: 

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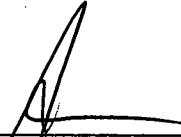
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PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matters by Appellant in the Record on Appeal on Lauren Acquaviva, Esquire, P. O. Drawer 14950, Surfside Beach, S. C. 29587, by depositing a copy of it in the United States Mail, postage prepaid, on June 4, 2018.

June 4, 2018



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