

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue, )  
)  
Petitioner, )  
)  
vs. )  
)  
Study Hall, LLC, d/b/a Study Hall, LLC, )  
)  
Respondent. )

Docket No. 19-ALJ-17-0269-CG 2020

**ORDER DENYING RESPONDENT'S  
MOTION TO RECONSIDER**

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SC Court of Appeals

A contested case hearing involving the South Carolina Department of Revenue (Petitioner or Department) and Study Hall, LLC, d/b/a Study Hall, LLC, (Respondent) was held on December 17, 2019, at the offices of the Administrative Law Court (ALC or Court) in Columbia, South Carolina. On January 15, 2020, the Court issued an order in which it found Respondent's owner (Starkey) to be of good moral character. However, the Court imposed the following conditions on granting renewal of Respondent's on-premises beer and wine permit and restaurant liquor by the drink license:

1. That the Petitioner's permit and license shall be suspended for ninety (90) days, beginning with the date that this order becomes final;
2. That Jonathan Starkey shall continue to comply with the payment plan for his South Carolina income taxes; and
3. That Petitioner will cooperate with any investigation and audit of other business taxes which might be owed, including Local Option Permits, or admissions taxes.

On January 23, 2020, Respondent filed a Motion for Reconsideration and Stay. The Motion to Stay the suspension of Respondent's alcohol permit and license was granted during the pendency of the Court's consideration of the Motion to Reconsider.

Respondent argues that the Court acted outside of its authority by imposing a penalty for a violation for which Respondent was not cited. Specifically, Respondent contends that the Department cited only one reason for its cancellation of Respondent's permit and license: that Respondent's owner lacked good moral character.

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On March 20, 2019, the Department notified Respondent that it intended to cancel Respondent's On-Premises Beer and Wine Permit and Liquor by the Drink License. Because Respondent was late in applying for renewal, a denial notice was issued advising Respondent to cease all sales of beer, wine, and liquor. Respondent did not comply with the notice nor did Respondent complete the requirements to renew until March 7, 2019.

The South Carolina Law Enforcement Division (SLED) subsequently notified the Department that Respondent was selling alcoholic beverages without a license on February 28, 2019. According to the Department, Respondent was unlicensed between November 30, 2018, and March 7, 2019.<sup>1</sup> Selling alcoholic beverages without a license was identified in the Department Determination as an one of the indications that Respondent's owner did not possess the requisite moral character to hold an alcohol permit and license.

In its Determination the Department observes that "there is no single criterion by which to determine if a person is of good moral character." The associated discussion includes selling alcohol without a license and being convicted of a violation of liquor laws. The Department, apparently, also gave weight to an event in Statesboro, Georgia, that took place in 2014 at a business previously owned and operated by Respondent's owner.

As for the Georgia incident, Starkey claims to have informed the Department about it during the original application process. Ms. Gatto, the victim's mother, testified that she notified the Department about the Georgia incident. Starkey also reported the event to the City of Clemson Chief of Police and attempted to show him the recorded video of the incident. Chief Dixon confirmed that he declined to view the video. The Georgia tragedy could have formed a basis for objection to or even for denial of Respondent's initial license application but should not be considered now as a factor in a subsequent renewal.

While a conviction for a violation of liquor laws can be weighed against an applicant's moral fitness, the record reflects only a pending charge and Starkey's application for Pre-trial Intervention, which, if successful, would expunge the charge.

The only remaining fact supporting the Department's contention that Starkey lacks the requisite moral character is the fact that Respondent stocked and sold beer, wine, and liquor without a valid

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<sup>1</sup> The previous license expired on November 30, 2018. A valid renewal went into effect on March 7, 2019. Thus, Respondent was unlicensed for 96 days from December 1, 2018, through March 6, 2019.

permit or license. In the original order, the Court recognized that “Respondent continued to sell beer, wine, and liquor after the expiration of its permit and license.” Selling beer and wine in this circumstance violates S.C. Code Ann. § 61-4-560 (2009) (making operation of a business without a permit a misdemeanor and providing that each day in which business is carried on without a permit a separate offense). In addition, S.C. Code Ann. § 61-4-600 (2009) provides that a permit must be surrendered immediately when the permit is revoked, cancelled, or suspended.

Likewise, S.C. Code Ann. § 61-6-4010 (2009) prohibits the sale of alcoholic liquors “except in accordance with the provisions of this title.” It is the long-standing law of South Carolina that liquor licenses “are mere permits, issued or granted in the exercise of the police power of the state to do what otherwise would be unlawful to do; and to be enjoyed only so long as the restrictions and conditions governing their continuance are complied with.” *Wall v. S.C. Alcoholic Beverage Comm’n*, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977); *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 57, 26 S.E.2d 22, 25 (1943). Selling alcoholic liquors without a license is a violation of the law. *Pirates’ Cove v. Strom*, 249 S.C. 270, 277, 153 S.E.2d 900, 903 (1967) (citing Section 4-91 (1962) (recodified as S.C. Code Ann. § 61-13-210 (1976) now S.C. Code Ann. § 61-6-4010 (2009))).

When renewal was denied, Respondent’s permit was effectively revoked or cancelled. Moreover, Starkey admitted that beer, wine, and liquor sales continued from December 7, 2018, until March 7, 2019, while he was not licensed.

The case cited by Respondent, *S.C. Dept. of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 731 S.E.2d 330 (Ct. App. 2012), involved violations shown by evidence presented by an intervenor, not cited by the Department, but used by the ALC to support imposition of a more severe penalty than the monetary fine assessed by the Department.

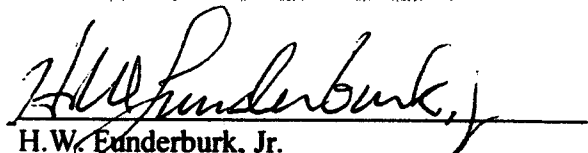
In this case, the violations supporting the penalty proposed by the Department, cancellation of Respondent’s permit and license, derived from testimony by a Department employee, by a SLED agent, and admissions by Starkey. While the Department did not seek a penalty specifically for this violation, it provided a factual basis for the Department’s proposed cancellation. This case is also distinguished from *Sandalwood* because the penalty imposed by this Court is less severe than the cancellation (revocation) of the permit and license renewal, which became effective on March 7, 2019. Furthermore, the Department’s determination that Starkey lacked the moral character to

obtain a permit and license could likely prevent his qualifying for a permit or license for the foreseeable future. The Court's imposing a suspension for slightly less than the length of time Respondent operated without a permit and license is certainly less severe than a cancellation that might disqualify Starkey from being permitted or licensed and less severe than a revocation with similar consequences.

For these reasons, the Motion for Reconsideration is **DENIED**.

**AND IT IS SO ORDERED.**

March 6, 2020  
Columbia, South Carolina

  
H.W. Enderburk, Jr.  
Administrative Law Judge

**Docket No. 19-ALJ-17-0269-CC**

**CERTIFICATE OF SERVICE**

I, Elizabeth A. Perkins, hereby certify that I have this date served the **Order Denying Respondent's Motion to Reconsider** in this case upon all parties to this case 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 parties and their attorneys as follows:

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March 6, 2020  
Columbia, South Carolina

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Elizabeth A. Perkins  
Judicial Law Clerk

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