

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

NO. 17-ALJ-17-0466-CC

RECEIVED
SEP 24 2018
SC Court of Appeals

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

v.

South Carolina Department of Revenue,Respondent.

FINAL BRIEF OF APPELLANT

Other Counsel of Record:

Lauren Acquaviva, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Marcus Dawson Antley, III, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Jason Phillip Luther, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Attorney for Appellant

G. Robin Alley, Esquire
Isaacs & Alley, L.L.C.
P. O. Box 8596
Columbia, South Carolina 29202

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

NO. 17-ALJ-17-0466-CC

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

v.

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

FINAL BRIEF OF APPELLANT

Other Counsel of Record:

Lauren Acquaviva, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Marcus Dawson Antley, III, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Jason Phillip Luther, Esquire
S. C. Department of Revenue
Office of General Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211-9979

Attorney for Appellant

G. Robin Alley, Esquire
Isaacs & Alley, L.L.C.
P. O. Box 8596
Columbia, South Carolina 29202

TABLE OF CONTENTS

ISSUES ON APPEAL	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT	2
I. 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 ..	2-3
IV. CONCLUSION	4

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.

TABLE OF AUTHORITIES

Page:

Cases:

<i>Al-Shabazz v State</i> 338 S.C. 354, 527 S.E.2 nd 742 (2000).....	2
--	---

OTHER AUTHORITIES

§12-60-1320 South Carolina Code	1, 2
§1-23-610(b) South Carolina Code Ann.....	2
§1-23-600 (Supp. 2017), South Carolina Code.....	2
§61-2-260 (Supp. 2017), South Carolina Code.....	2
§12-60-1330 South Carolina Code	2
§1-23-600(b) South Carolina Code.....	2
Rule 3(c) S. C. Administrative Law Court Rules	2, 4
§12-60-1324 South Carolina Code	3

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. (R. p.1.) 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. (R.p.8.) 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. (R.p.29)

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:

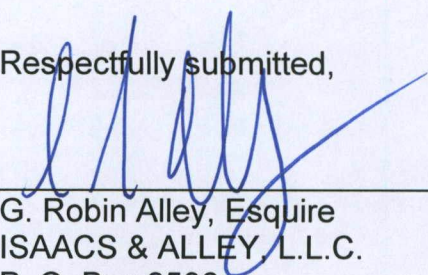
"Whenever a party has a right or is required to do some act or take some preceding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, by e-mail, or upon a person designated by statute to accept service, five (5) days shall 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: 

G. Robin Alley, Esquire
ISAACS & ALLEY, L.L.C.
P. O. Box 8596
Columbia, SC 29202-8596
(803) 252-6323 (Telephone)
(803) 252-3612 (Facsimile)
Attorney for Appellant

RECEIVED
SEP 24 2018
SC Court of Appeals