

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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May 11 2021

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2020-001691

RM and Sons, LLC, d/b/a Anderson Liquor,..... Petitioner/Respondent,

v.

South Carolina Department of Revenue and City of Anderson,..... Respondents

of which City of Anderson isAppellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The Administrative Law Court did not err in finding that the proposed location for Respondent's liquor store was a "suitable" place under South Carolina Code Annotated Section 61-6-910(2) and in ordering the Department to grant Respondent's application for a retail liquor license.

STATEMENT OF THE CASE

This matter came before the Court for a contested case hearing pursuant to Respondent RM & Sons, d/b/a Anderson Liquor's ("Anderson Liquor") application with the Respondent South Carolina Department of Revenue ("Department") for a retail liquor license for its location at 1311 Williamston Road, Anderson, South Carolina. (R. pp. 4-15). The Department conditionally denied Respondent Anderson Liquor's request on or about April 29, 2020. (R. pp. 4-15). On May 6, 2020, Respondent Anderson Liquor timely protested the denial of the license to the Department. (R. pp. 4-15). On July 8, 2020, the Department issued its determination denying Respondent Anderson Liquor's license. (R. pp. 4-15).

Respondent Anderson Liquor timely appealed this decision to the Administrative Law Court. The City of Anderson was granted leave to intervene without objection. (R. p. 28, ll. 3-18; pp. 4-15). A contested case hearing was held on November 5, 2020. After hearing testimony and reviewing evidence presented at the hearing, Judge Lenski issued his Order determining that the Department had not proven that Respondent Anderson Liquor's proposed location was not a suitable place pursuant to South Carolina Code Section 61-6-910(2) and ordering the Respondent Department to grant Respondent Anderson Liquor's application for a liquor license for its location at 1311 Williamston Road, Anderson, South Carolina subject to certain conditions contained in

the Order. (R. pp. 4-15). Appellant City of Anderson timely appealed Judge Lenski's Order. (R. pp. 16-19).

STATEMENT OF THE FACTS

Respondent Anderson Liquor is the owner of a parcel of land located on Williamston Road very close to where it intersects Highway 29 in Anderson County, South Carolina. (R. p. 15, ll. 7-12; p. 15, l. 24 – p. 36 l.1). The LLC is owned by Rajelish "Raj" Patel, who testified at the contested hearing. (R. p. 34, ll. 19-22; p. 35, ll. 7-9). Mr. Patel lives in Piedmont, South Carolina. (R. p. 34, l. 25 – p. 35, l. 4). Mr. Patel is presently employed as the manager of a Shell service station/convenience store located across the street from the property at issue in this appeal which is owned by his grandmother. (R. p. 37, ll. 2-8; p. 117). Mr. Patel has managed this business for approximately five (5) years. (R. p. 37, ll. 14-19). Mr. Patel testified that he is at the Shell station/convenience store, "every day, almost all day," working at the cash register. (R. p. 37, ll. 22-25; p. 38, ll. 6-8). He testified that approximately ninety percent of his customers are repeat, who he described as "regular clients." (R. p. 52, l. 22 – p. 53, l. 3). He testified that during the time he has worked as manager he has had no issues with the Anderson Police Department. (R. p. 38, l. 24 – p. 39, l. 1).

The Shell station/convenience store has an off premises or "to go" beer and wine permit. (R. p. 38, ll. 3-5). This beer and wine permit was obtained without protest. (R. p. 39, ll. 9-21). No one, including law enforcement, has ever protested it. (R. p. 39, ll. 12-25). Anyone who wishes to purchase beer or wine has their identification checked and verified. The Shell station/convenience store utilizes electronic age verification. (R. p. 38, ll. 6-14). The store has received no warnings or alcohol violations. (R. p. 38, ll. 15-20). There have been no arrests at the Shell station. (R. p. 38, ll. 15-23; p. 54, l. 24 – p. 54, l. 14). While there was testimony regarding calls for law enforcement

made to the Shell station, there was no evidence presented that any of these calls involved illegal activity at the Shell station itself or the proposed location for the Respondent's liquor store. (R. p. 91, ll. 14-18; p. 100, ll. 4-8; pp. 4-15).

Prior to the property at 1311 Williamston Road being purchased by Mr. Patel's LLC, the property was used as a "...regular convenience store, grocery store, check cashing place." (R. p. 43, ll. 9-17; p. 64, ll. 13-20). The property is located in a rural area across the street from the Shell station with woods and trees around and behind it. (R. p. 36, ll. 17-21; p. 48; pp. 119-120). The property had a permit to sell wine and liquor for off premises consumption long before its purchase by Respondent. (R. p. 43, ll. 19-24). Mr. Patel intends to operate a liquor store in the building which he will personally manage (much like he has managed the Shell station location for his grandmother for the past five (5) years). (R. p. 46, l. 9 – p. 47, l. 4). Mr. Patel borrowed \$240,000 to invest in the building. (R. p. 44, ll. 16-21). Mr. Patel testified that the purchase of this location for use as a liquor store has constituted a significant investment for him. (R. p. 52, ll. 6-15). Mr. Patel testified that he will lose this investment if his application for a permit is not granted. (R. p. 52, ll. 6-15; ll. 22-25).

After purchasing this property in April of 2020, Respondent began making plans to remodel the building. These plans are presently on hold pending resolution of this matter. (R. p. 43, ll. 9-17; p. 44, ll. 4-15). He paved the parking lot which has 8-10 spaces which he considers to be adequate. (R. p. 44, ll. 23-25; p. 45, ll. 12-21). He eliminated one of the two existing entrances. (R. p. 47, ll. 5-23). Only one business will operate out of the store. Respondent intends to utilize half of the space in the building for a liquor store and the other half will be used for storage. (R. p. 47, ll. 5-23). Mr. Patel testified that the property has exterior lighting and described it as "well lit."

(R. p. 45, ll. 12-23). Respondent testified that the liquor store will close at 7 pm, prior to the Shell station. (R. p. 45, ll. 24-25).

Mr. Patel testified that he will follow all applicable guidelines in the operation of his store. (R. p. 53, ll. 5-6). There was no evidence presented to the contrary. (R. p. 66, ll. 4-5). He will not sell alcohol to minors. (R. p. 66, ll. 15-25). He testified he will train his employees to check the identification of store customers. (R. p. 46, ll. 23-25). His employees will use electronic age verification in the new business. (R. p. 46, ll. 23-25). Respondent testified that he will not allow litter to accumulate around the store. (R. p. 46, ll. 12-14). He will not allow any loitering around the store. (R. p. 46, ll. 9-14). He will have security cameras. (R. p. 56, ll. 11-13). Mr. Patel testified that he does not allow drug transactions to occur at the Shell station/convenience store and will not allow them at the Liquor Store. (R. p. 53, l. 20 – p. 54, l. 3).

STANDARD OF REVIEW

A decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law. *The Original Blue Ribbon Taxi Corporation v. South Carolina Department of Motor Vehicles*, 380 S.C.600, 670 S.E.2d. 674 (Ct. App. 2008); *Olson v. S.C. Dep't of Health and Environmental Control*, 379 S.C.57, 663 S.E.2d. 497 (Ct. App. 2008). The Administrative Law Judge's Order should be affirmed if supported by substantial evidence in the record. *The Original Blue Ribbon Taxi Corporation v. South Carolina Department of Motor Vehicles*, 380 S.C. 600, 670 S.E.2d. 674 (Ct. App. 2008); *Whitworth v. Window World*, 377 S.C. 637, 661 S.E.2d. 333 (2008). The reviewing Court may reverse or modify the Administrative Law Court's opinion only if the finding, conclusion, or decision reached is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or is otherwise

affected by an error of law. *The Original Blue Ribbon Taxi Corporation v. South Carolina Department of Motor Vehicles*, 380 S.C. 600, 670 S.E.2d. 674 (Ct. App. 2008); *SGM-Moonglo, Inc. v. S.C. Dep't of Revenue*, 378 S.C. 293, 662 S.E.2d. 487 (Ct. App. 2008).

ARGUMENT

I. Judge Lenski's Order Is Supported by Substantial Evidence and Should Be Affirmed by This Court

Judge Lenski's Order finding and ruling that Respondent Anderson Liquor's property at 1311 Williamston Road is a "suitable place" pursuant to South Carolina Code Section 61-6-910(2) is clearly supported by the overwhelming evidence presented before him at the contested hearing. In South Carolina, the requirements for a retail liquor license are set forth in Sections 61-6-110 and 61-6-910 of the South Carolina Code. S. C. Code Ann. Section 61-6-110(2009); S. C. Code 61-9-910 (2009). South Carolina Code Section 61-9-910 provides, in part, that a liquor license must be refused if "the store or place of business to be occupied by the applicant is not a suitable place." S.C. Ann. 61-6-910(2). Broad discretion is vested in the trier of fact to determine the suitability of a particular location for licensure. See, *Fast Stops, Inc. v. Ingram*, 276 S.C.593, 281 S.E.2d. 118 (1981). Although "proper location" is not statutorily defined, the Administrative Law Court is vested, as the trier of fact, with the authority to determine the fitness of a particular location. *Id.* While the issuance or granting of a license to sell alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed (in this case the Department of Revenue), when a contested case hearing is requested to review the Department's denial of a license or permit, the Administrative Law Court serves as the sole finder of fact and reviews the matter *de novo*. *Brown v. S.C. Dep't of Health and Environmental Control*, 348 S.C.507, 560 S.E.2d. 410 (2002). As the trier of fact, the weight and credibility assigned to

the evidence presented at the hearing is within the province of the Court. *See, South Carolina Cable Television Assn' v. S. Bell Tel. Co.*, 308 S.C.216, 417 S.E.2d. 586 (1992).

Judge Lenski's Order that the Department failed to establish this particular location was not suitable for a liquor license and that the location in question is suitable for a liquor store is supported by the overwhelming evidence presented at the contested hearing and should be affirmed by this Court. Rajelish "Raj" Patel, the owner of Respondent Anderson Liquor testified at the contested hearing. (R. p. 35, ll. 7-9; p. 34, ll. 19-22). Mr. Patel is presently employed as the manager of a Shell service station/convenience store located directly across the street from the property at issue in this appeal. Mr. Patel manages the Shell station which is owned by his grandmother. (R. p. 37, ll. 2-8). Mr. Patel has managed this business for approximately five (5) years. (R. p. 38, ll. 14-19). Mr. Patel testified that he is at the Shell station/convenience store, "every day, almost all day." (R. p. 37, ll. 22-25). Again, the Shell station is located directly across the street from the property at issue in this appeal. (R. p. 121).

The Shell station has an off premises or "to go" beer and wine permit. (R. p. 38, ll. 3-5). Anyone who wishes to purchase beer or wine has their identification checked and verified. The Shell station utilizes electronic age verification. The store has received no warnings or alcohol violations. (R. p. 38, ll. 15-20). There have been no arrests at the Shell station. (R. p. 38, ll. 15-23; p. 54, l. 24 – p. 55, l. 14). There have been no protests for renewal of the store's beer or wine permit during the time that Mr. Patel has worked there. (R. p. 39, ll. 6-8; p. 39, ll. 15-21).

Prior to the property at issue in this case (1311 Williamston Road) being purchased by Mr. Patel's LLC, the property was used as a "...regular convenience store, grocery store, check cashing place." (R. p. 53, ll. 9-17). It is across the street from the Shell station with woods and trees behind it. (R. p. 48, ll. 2-24). The property had a permit to sell wine and liquor for off premises

consumption. (R. p. 43, ll. 18-24). Mr. Patel intends to operate a liquor store in the building which he will personally manage. (R. p. 46, l. 9 – p. 47, l. 4). Mr. Patel borrowed \$240,000 to invest in the building. (R. p. 44, ll. 16-21). Mr. Patel testified that this constituted a significant investment for him. (R. p. 52, ll. 6-15). Mr. Patel testified that he will lose this investment if his application for a permit is not granted. (R. p. 52, ll. 6-15).

After obtaining this financing and purchasing the property, Respondent began making plans to remodel and upfit the building. (R. p. 44, ll. 4-15). He paved the parking lot. (R. p. 45, ll. 12-21). He eliminated one of the two existing entrances. (R. p. 47, ll. 5-23). Mr. Patel testified that the property has exterior lighting and described it as “well lit.” (R. p. 45, ll. 12-23).

Mr. Patel testified that he will not sell alcohol to minors. (R. p. 46, ll. 15-25). He testified he will train his employees to check identification of store customers. (R. p. 46, ll. 23-25). His employees will use electronic age verification in the new business. (R. p. 46, ll. 23-25). He will not allow any loitering around the store. (R. p. 46, ll. 9-14). He will have security cameras. (R. p. 56, ll. 11-13). Mr. Patel testified that he does not allow drug transactions to occur at the Shell station/convenience store and will not allow them at the Liquor Store. (R. p. 53, l. 20 – p. 54, l. 3).

Judge Lenski also heard testimony from Kenneth Wayne Blakely. (R. p. 52, ll. 12-14). Mr. Blakely lives two miles up the street from the Shell station. (R. p. 52, ll. 12-17). He retired from the Anderson City Police after 26 years of service. (R. p. 52, ll. 19-25). Mr. Blakely retired as Sergeant on the Road Patrol. He was supervisor of the area around the Shell station and the proposed location for Respondent’s liquor store. (R. p. 63, ll. 1-9; p. 64, ll. 13-20). Mr. Blakely appeared voluntarily at the contested hearing (R. p. 64, ll. 1-8).

Mr. Blakely testified that he is familiar with Raj and his family. He testified that he knows them very well. (R. p. 63, l. 25). He described them as, “...very good citizens. I’ve never had an

issue with them.” (R. p. 63, ll. 14-23). Mr. Blakely and his wife shop at the Shell station managed by Mr. Patel (R. p. 63, ll. 19-24). Mr. Blakely testified that based on his experience, there was nothing unique about the location of the property at issue in this case or about the properties surrounding it. (R. p. 64, l. 24 – p. 65, l. 6) He testified that there was nothing to differentiate this location from the location of other liquor stores in Anderson. (R. 65, ll. 7-19). He testified that the existing Shell station was not a burden on law enforcement. He testified that the proposed liquor store would not create any more of a burden on law enforcement. (R. p. 65, l. 24 – p. 66, l. 4; p. 67, ll. 14-23).

The Appellant presented no evidence of any concerns over the business now operated by Respondent or on the effect of a liquor store at the property he has purchased. There was no evidence presented of alleged criminal activity or law enforcement calls to either the Shell station presently managed by Respondent or at the specific location that is at issue in this case, 1311 Williamston Road. Neither of the Appellant’s witnesses had any issues with the number of calls to law enforcement either at the property at issue in this case or at the Shell station managed by Respondent. (R. pp. 4-15; p. 84, l. 24 – p. 85, l. 1; p. 91, ll. 11-18; p. 91, ll. 14-18).

This is not a case where there is direct evidence of crime at the location in question. *See, Tsegay Haile d/b/a/ Kezo Quick Stop, Petitioner*, No. 17-ALJ-17-0372 CC, 2018 W.L. 1900322 (April 11, 2018). There was no evidence presented that the proposed location for Respondent’s store was a “hotspot” for criminal activity. (R. pp. 4-15). The Appellant’s objections and argument relies solely on alleged criminal activity and law enforcement response not at the location at issue in this case where the liquor store will be located, but on two properties located in the general vicinity or some distance away from Respondent’s proposed location, Fairview Gardens Apartments and The Southerner Motel. Appellant conceded at the hearing that if these two

properties were eliminated from consideration, they would have no issue with the granting of a license to Respondent (R. p. 92, ll. 3-4).

Fairview Gardens Apartments are located approximately 200-500 yards from the piece of property in question in this case. (R. p. 41, ll. 8-20). There was testimony that the apartments were a 10-15 minute walk away from the proposed location of Respondent's store.

The Southerner Motel is located approximately 100 yards from the proposed location at issue in this case. It is not directly across the street from the proposed location. There are two roads and a small hill between the proposed location of the liquor store and the hotel. (R. p. 67, ll. 1-22). For many years there was a bar operating directly across the street from the hotel (R. p. 42, ll. 6-23) although the bar has now apparently closed.

The testimony presented by the Appellant before Judge Lenski and again before this Court, focuses on alleged criminal activity and law enforcement calls to each of these properties. While Appellant presented evidence at the hearing of law enforcement calls to the Southerner Hotel and the Fairview Apartments, Appellant did not present any evidence that any of these calls were alcohol related or that the granting of Respondent's license would have any effect on law enforcement calls to the surrounding area. (R pp. 4-15). There was no evidence presented the operation of a bar directly across the street from the Fairview Apartments complex had had any effect on crime in the area. In fact, Appellant's witness, Chief James Stewart acknowledged that any link between the granting of Respondent's license and an increase in crime would be speculative at best. (R. p. 90, l. 17 – p. 91, l. 7). Chief Stewart acknowledged that if Mr. Patel "followed all the rules," (and there was no evidence presented in this case that he would not), that his business endeavor would be successful. (R. p. 91, ll. 1-7).

In addition, the testimony of Appellant's two witnesses was directly contradicted by the testimony of Ken Blakely, himself a former law enforcement officer who worked the area in question, that the areas cited by Appellant were not any different than any other areas of Anderson and that the proposed liquor store would not have any bearing on crime in the area.

The Department's determination of unsuitability pursuant to South Carolina Code Section 61-6-910(2) was unsupported by the evidence presented at trial. The Department totally and completely failed to prove that the proposed location of Respondent's store was unsuitable for the issuance of retail liquor license. The Department failed to prove the issuance of a retail liquor license would have any effect at all on crime and/or police calls to the location in question or to the surrounding area. The Appellant failed to prove that the issuance of a license to Respondent would have any negative impact at all on law enforcement at the location in question (or in the surrounding area). While Appellant's brief makes mention to churches and schools located in the surrounding area, none of these locations lodged any protest to the Respondent's application for a license. (R. p. 96, ll. 16-20).

CONCLUSION

For the reasons set forth above, this Court should affirm the Judgment of the Administrative Law Court Judge which reversed the Department's decision and held that the Respondent's location was suitable for an off premises liquor license pursuant to South Carolina Code Ann. 61-6-910(2).

[Signature block to follow]

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCAR.

Respectfully submitted,

May 11, 2021

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