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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alhanik, LLC, d/b/a Obama Mart,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Revenue,)
)
Respondent.)
_____)

Docket No. 20-ALJ-17-0330-CC

FINAL ORDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) on a request by Alhanik, LLC, d/b/a Obama Mart (Petitioner or Obama Mart) for a contested case hearing challenging a final determination by the South Carolina Department of Revenue (Respondent or Department) denying renewal of Petitioner’s seven-day off-premises beer and wine permit because of law enforcement and public protests, the applicant’s lack of good moral character, and the failure to disclose a principal.

Respondent issued a Final Department Determination on December 1, 2020, notifying Petitioner that its application for permit renewal was denied because the Department received valid public protests, because outstanding taxes had not been paid, because a principal had not been disclosed, and because the applicant or its principals or its employees did not have good moral character. S.C. Code Ann. § 61-4-525, § 61-2-160, § 61-2-100(J), § 61-2-100(D) (2009).¹ A permit allowing the sale of beer or wine must not be issued unless:

The applicant, a partner, or a co-shareholder of the applicant, and each agent, employee, and servant of the applicant to be employed on the licensed premises are of good moral character.

S.C. Code Ann. § 61-4-520(1); *See also* § 61-2-100(D).

On December 4, 2020, Petitioner requested a contested case hearing before the ALC.

A hearing was held on August 11, 2021, at the offices of the ALC in Columbia, South Carolina.

¹ Prior to the hearing, Petitioner paid the outstanding tax debt. Therefore, the parties agreed that this issue was no longer before the Court as a ground for denying the permit.



FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and evaluated their credibility, taking into consideration the parties' respective burdens of proof, the Court makes the following Findings of Fact by a preponderance of the evidence.

Notice of the time, date, place, and subject matter of the hearing was timely given to all Parties and to the Protestants.

Petitioner's business is located at 5831 N. Main Street, Columbia, South Carolina. Sadeq Alaqar owns a seventy-five percent (75%) interest in Alhanik, LLC. He has lived in the United States since 2004 and in South Carolina since 2013. He is forty-one years old. He began to work at Obama Mart in 2013 when acquired a twenty-five percent (25%) interest in Alhanik, LLC.²

Alaqar manages and operates the convenience store and lives in Columbia, South Carolina. He has no criminal convictions, has no delinquent taxes nor any alcohol violations. Obama Mart sells gasoline, snacks, and beer and wine as well as lottery tickets. Obama Mart uses a scanner to prevent underage sales. The business location has adequate lighting, parking spaces, and security cameras, with which to monitor the interior and the exterior of the building and lot. According to Alaqar, within two blocks four businesses (including Obama Mart and a Dollar General) sell off-premises beer and wine.

Alaqar calls law enforcement when people remain on the premises after being asked to leave. He contends that some loiterers come from other businesses. He participated in a Richland County Sherriff's survey of security needs. As a result, he cut back some trees, put up signs, and added lights and cameras. He estimated spending around \$10,000.00 for these improvements. He has made his video recordings available to the City of Columbia for incidents that occurred across the street from Obama Mart.

In 2013 Murad Alhanik owned fifty percent (50%) of Alhanik, LLC. When Alhanik was arrested in 2018 and operation of the business was threatened, Alaqar purchased Alhanik's 50% share. He paid Alhanik \$30,000.00 for his share of the inventory. Alaqar spends approximately \$12,000.00 a month for alcoholic beverage inventory and uses four vendors who come once or twice a week.

² The remaining 25% is owned by Mohammed Fahs Saleh (*See* the Amended Operating Agreement, Petitioner's Exhibit 5).

Murad Alhanik, through Michigan, LLC, owns the lot and buildings. Alaqar pays Michigan, LLC, \$4,000.00 monthly to lease the premises.³ Alaqar asserted that Alhanik no longer plays any role in Obama Mart's operation.

Murad Alhanik came to the United States in 2001 and settled in Michigan. He came to South Carolina in 2006. He organized Alhanik, LLC, in 2010, and purchased the real property on which the business is located in 2016. After Alaqar came to work and purchased a 25% interest in Alhanik, LLC, Murad Alhanik and Alaqar ran the station and convenience store. In 2018, on his lawyer's advice, Murad Alhanik sold his 50% interest in Alhanik, LLC, to Alaqar. He retained title to the real estate and buildings and leased the permitted premises to Alhanik, LLC. He planned to open a restaurant with another partner and began renovating another building, doing much of the work himself. When his partner died, he gave up the idea.

On December 17, 2019, Murad Alhanik entered a guilty plea to a charge for "Failure to Pay Tax, Make a Return, or Keep Records." (Sentencing Sheet, Respondent's Exhibit 2.) Alhanik was given a suspended sentence conditioned in part on his paying restitution (for taxes owed) in the amount of \$136,753.00. Subsequently, he executed a Department of Revenue Power of Attorney (Form 2848) appointing attorneys to represent Alhanik, LLC, d/b/a Obama [Mart] in a dispute over sales taxes due from January 31, 2012, through December 31, 2021. (See Respondent's Exhibit 7.) Alhanik denied understanding the import of his executing the form and insisted that he believed the attorneys were representing him in his personal liability for Obama Mart's failure to pay proper and accurate sales taxes.

Major Harry Polis from the Richland County Sheriff's Department testified as the Respondent's witness. The Richland County Sheriff's Department received some seven hundred seventy (770) calls to Obama Mart over a two-year period ending the day before the hearing (through August 10, 2021). These calls were for robberies, assaults, carjackings, resisting arrest, fights, shots fired, suspicious persons, civil disturbances (with and without reports of weapons), drunkenness, disorderly conduct, prostitution, indecent exposure, loitering, vandalism, and pointing or presenting a firearm. Although not every call resulted in arrests, law enforcement responses to Obama Mart are a severe drain on the resources of the Sheriff's Department. The Sheriff's

³ The lease began at \$3,500.00 monthly in 2016 and increased to \$4,000.00 per month on the renewal date, February 25, 2021. In the Amended Operating Agreement, this increase is described as temporary to compensate Murad Alhanik for his interest in the "existing inventory," which the testimony identifies as a total of \$30,000.00.

Department considers Obama Mart to be a nuisance. Except for the convenience store across the street (in the jurisdiction of the City of Columbia), no other stores in the area generate as many calls.

A meeting was held at the Sherriff's Department on July 15, 2020. Murad Alhanik, Sadeq Alaqar, along with an unidentified female, discussed crime trends in the area and participated in a security survey. Murad Alhanik contributed as owner of the property. Alhanik, LLC, followed some of the suggestions as outlined supra (p. 2).

Polis considers the Obama Mart to be a hotbed for criminal activity and a significant drain on law enforcement resources. He also believes Obama Mart to be detrimental to the community. Although Sherriff's deputies responded to seven hundred seventy calls, problems persist. The Department arrested more than one hundred individuals, but often no one from Obama Mart appeared to testify at the prosecutions of those arrested.

On March 4, 2021, and March 5, 2021, a Final Notice Before Revocation was served on Alhanik, LLC. (Petitioner's Exhibit 4.) The underlying Notice of Assessment showed taxes, interest, and penalties due in the total amount of \$248,842.62 for sales taxes due for years 2013, 2014, 2015, and 2016. A negotiated settlement was reached on June 16, 2021, under the terms of which Alhanik, LLC, remitted \$159,647.17 to the Department.

Protestant testimony began with the protest filed by the Richland County Sherriff's Department represented by Major Harry Polis. He reiterated that Obama Mart is a drain on law enforcement resources and harms community welfare. Those impacts are directly related to the sale of alcohol at Obama Mart.

Gwendolyn Singletary expressed community concern with crime, vagrancy, and code enforcement. She has personally observed individuals leaving the premises while drinking from brown bags, women engaged in what appeared to be prostitution or solicitation for prostitution, and other illegal activities. Members of the community were afraid to walk near Obama Mart. She has seen individuals arrested on Obama Mart's premises.

Malcom Carter observed prostitution—negotiations for and resulting sexual activity in cars in Obama Mart's parking lot and next to the store. The quantity of alcohol sold and the behaviors observed show that Obama Mart is a nuisance to the community. Obama Mart cameras should be

monitored, and security guards should be hired to reduce or prevent illegal activities.

Janet Carter and her husband (Malcolm) installed security cameras on their property to protect themselves and visiting family from illegal activities spilling over from Obama Mart. She saw a customer pick up a prostitute in Obama Mart's parking lot and engage in sexual acts after parking in her neighbor's carport.

Councilman Sam Davis spoke against granting the permit renewal. He expressed concerns based on the failure of the business operators to come out of the store to discourage illegal behavior on their premises.⁴

Gloria Brown testified against the permit renewal because of her observation of public intoxication on the premises.

Constance Lorick-Walker testified against the permit renewal based on her observation of public drinking and solicitation and of other criminal activity in the neighborhood deriving from alcohol consumption. While neighbors and law enforcement work to eliminate problems, Obama Mart management has taken no steps to control and suppress illegal behavior on the business premises.

In rebuttal, Sadeq Alaqar claimed that law enforcement was notified by him or his employees about prostitutes and people drinking on the premises. He also denied that anyone in the community had come to him with complaints or invited him to meet with them about their issues with Obama Mart.

Alaqar also asserted that law enforcement responded to his calls but did not arrest or remove the offending individuals. He also insisted that Obama Mart was not the only source of problems in the community.

Also in rebuttal, Murad Alhanik testified that, when he operated the store, he had called law enforcement about prostitutes, loiterers, and trespassers. He believed that more people had been arrested in the past.

DISCUSSION AND CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as matters of law. The ALC has jurisdiction in this matter pursuant to S.C. Code Ann. § 61-2-260 (2009) and S.C.

⁴ Although Mr. Davis did not register as a protestant, the parties did not object to hearing from him.

Code Ann. § 1-23-600 (Supp. 2020). *See Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984) (“[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed . . .”).

Licenses and permits issued by the state for the sale of beer, wine, and liquor are not property rights but are rather privileges granted in the exercise of the police power of the State. *Wall v. S.C. Alcohol Beverage Control Comm'n*, 269 S.C. 13, 15, 235 S.E.2d 806, 807 (1977).

The question before the Court is whether this business will be permitted to sell beer and wine for off-premises consumption. The ALC, as the trier of fact, has the authority to determine if the applicant’s proposed place of business is suitable. *See Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595-96, 281 S.E.2d 118, 119-20 (1981). Determining whether a location is proper involves many considerations related to the nature of the proposed business and its impact on the community. *Kearney v. Allen*, 287 S.C. 324, 327, 338 S.E.2d 335, 337 (1985). Broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location. *Id.* at 595, 281 S.E.2d 118, 120.

Key importance is the burden on law enforcement in considering the suitability of a location. *Palmer*, 282 S.C. at 250, 317 S.E.2d at 478 (“The findings . . . that there have been law enforcement problems in the area, support the conclusion that the location is unsuitable for the sale of cold beer and wine.”). Denial is appropriate where the public areas surrounding the proposed premises have been the source of repeated law enforcement problems. *Roche v. S.C. Alcoholic Beverage Control Comm'n*, 263 S.C. 451, 455, 211 S.E.2d 243, 244-45 (1975).

S.C. Code Ann. § 61-4-520 sets forth the specific requirements for issuance of an off-premises beer and wine permit. S.C. Code Ann. § 61-4-520(1) provides that an “applicant, a partner, or co-shareholder of the applicant, and each agent, employee, and servant of the applicant to be employed on the licensed premises [must be] of good moral character. S.C. Code Ann. § 61-4-580(5) prohibits “any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State.”

The Richland County Sheriff’s Department reported a large number of calls received with the Obama Mart as the problem locus. Although Major Polis acknowledged cooperation from the business in cutting back trees and adding signs, lighting, and cameras, the business’s owners have

not followed through by testifying against the individuals arrested at their behest. Robberies, carjackings, loitering, public drunkenness, and other illegal activities persist.

Furthermore, as a protestant on behalf of the Sherriff's Department, Major Polis emphasized Obama Mart's burden on law enforcement resources and Obama Mart's role in the continuing decay of the community.

The protestants from the local community reported their direct observations of public drunkenness, prostitution, vagrancy, and threatening behavior from individuals coming and going from Obama Mart.⁵ They emphasized the impact of these behaviors on the surrounding community.

A protest may not be a sufficient reason to deny an application for a license or permit, especially when allegations of unsuitability are based on speculation. Here, however, the protestants, including law enforcement, provided evidence from direct observation and experience. As in *Kan Enters., Inc. v. S.C. Dep't of Revenue*, 420 S.C. 596, 606, 803 S.E.2d 882, 887-88 (Ct. App. 2017) law enforcement testimony about the "prevalence of crime at and near" the location, and the drain on law enforcement resources as well as the community members' personal observations of "loitering, littering, panhandling, and other criminal activity at or near" the business supports denial of the permit. This testimony and the statutes invoked warrant the conclusion that Obama Mart is "no longer a suitable location for the off-premises sale of beer and wine." *Id.* 803 S.E.2d at 888. Petitioner's alcohol sales clearly contribute to the problems plaguing this neighborhood.

Petitioner denies its responsibility and asserts that effective law enforcement is the solution. However, law enforcement cannot solve these problems without the cooperation of business owners and employees who are willing to testify in support of the prosecutions of those arrested for prostitution, loitering, and vagrancy.

The final issue in this case is the Department's assertion that Murad Alhanik continues to be involved in the operation of the business as an undisclosed principal. His signing the Department's Power of Attorney form is one indicator of his continuing involvement in the business, as is his continuing to serve as the agent for Alhanik, LLC.

However, a significant fact bearing on this issue is the way Alhanik, LLC, operates. The business

⁵ Thirty-three individuals filed protests. Five of the community protestants testified. In addition, a member of Columbia City Council spoke in support of the protestants and included his personal observations of prostitutes and intoxicated individuals around the business.

operates with cash payments and without adequate financial records. Some \$12,000.00 in alcohol purchases are made each month. Another \$4,000.00 goes for monthly lease payments which are made as cash deposits to an account allegedly in the name of Michigan, LLC. Alaqar also continues to make other cash payments to Murad Alhanik in the amount of deposits of \$2,000.00 to \$3,000.00, presumably, also made to Michigan, LLC. There are no checks or receipts for these payments.

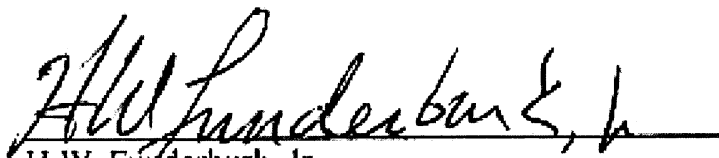
The association of Murad Alhanik (and Michigan, LLC) with Sadeq Alaqar and Alhanik, LLC, is murky at best. The Amended Operating Agreement (Petitioner's Exhibit 5) provides for continuing payments to Murad Alhanik for the transfer of his interest in the inventory of Alhanik, LLC. These payments are incorporated in the lease between Michigan, LLC, and Alhanik, LLC. The Court cannot definitively conclude that Murad Alhanik is an undisclosed principal, but continuing cash transfers without receipts and financial records leave the issue unresolved.

In view of the resolution of other issues that lead to the Court's decision to affirm Respondent's denial of this permit application, it is unnecessary to decide this question. *See Futch v. McAllister Towing of Georgetown*, 335 S.C. 598, 518 S.E.2d 591 (1999).

In this case, Petitioner, does not meet the statutory criteria for this permit to be issued. It is, therefore, **ORDERED** that the Department's denial of the renewal of Petitioner's off-premises beer and wine permit is **AFFIRMED**.

AND IT IS SO ORDERED.

September 9, 2021
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge



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CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served this **Final Order** upon all parties to this cause by electronic mail to the address(es) provided by the parties and/or their attorneys.

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