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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

ORDER DENYING MOTION
TO RECONSIDER

This matter is before the South Carolina Administrative Law Court (ALC or Court) on a Motion to Reconsider filed by Alhanik, LLC, d/b/a Obama Mart (Petitioner or Obama Mart). Petitioner asks the Court to reconsider its order affirming the 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 Court determined that the location was not suitable to sell beer and wine for off-premises consumption.

Petitioner contends that the Court overlooked, misinterpreted or failed to apply South Carolina law, and/or failed to consider certain evidence and arguments presented at the contested case hearing held on August 11, 2021, at the offices of the ALC in Columbia, South Carolina. In support of its Motion, Petitioner presents a list of thirty-one (31) items which it characterizes as factual inconsistencies.

The first five paragraphs deal with historical renewals at Obama Mart and a recent renewal for a nearby location. Although historical operations and previous renewals may create a presumption of suitability, current facts may overcome that presumption. *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 crime and the burden on law enforcement resources and testimony from community members based on “personal observations and experiences with loitering, littering, panhandling, and other criminal activity” made the location unsuitable).¹

The seventh paragraph alleges that the applicant has experience running a convenience store. The

¹ Paragraph 16 asserted that no evidence showed that conditions around Obama Mart were “worse than the overall conditions found in other areas.” Denial of a permit renewal depends on showing that the location is less suitable, not that it is the worst in the state.



Court is not persuaded that past good behavior or a decision in another case provide a relevant basis for approving Petitioner's current application. Having experience operating a convenience store may be a benefit, but experience does not assure present and future compliance with alcoholic beverage statutes.

Paragraphs 9 and 10 refer to Petitioner's participation in a security survey with the Sheriff's Office and its implementation of some of the suggested security measures. The Court, as did Major Polis (paragraphs 21 and 22), acknowledged that Petitioner cut back some shrubbery and a tree and also added signs, lights, and cameras. However, the Court did not find that these measures decreased the solicitation of and engagement in prostitution in or around the premises nor reduced the consumption of alcohol on the premises. Nor did the Court find these measures prevented other illegal behaviors including presenting and pointing firearms, and careless disposal of empty alcohol cans and bottles.

In paragraphs 13 and 14, Petitioner agreed with issues raised by the protestants but denied that Obama Mart is responsible for the area's overall deterioration and the increase in crime.

Several paragraphs (15, 18, 19, and 20) deflect testimony against Petitioner's renewal onto another convenience store. The Court is not convinced that such deflection helps Petitioner's renewal application.

In paragraph 29, Petitioner alleges that the Court erred in determining that Petitioner was not of good moral character. In fact, although that was one of the bases for the Department's denying the renewal, the Court made no finding concerning Petitioner's moral character or the characters of his employees. The Court did, however, note its concern with the business operations using cash transactions without adequate financial records and without checks or receipts for business payments to Murad Alhanik. These are not issues of moral character though they certainly raise the possibility of financial discrepancies in the long run.

The testimony of Major Harry Polis from the Richland County Sherriff's Department (both as Respondent's witness and as a protestant) and the testimony of neighborhood protestants support denial against the allegations raised by paragraphs, 6, 8, 11, 12, 17, 23, 28, 30, and 31.

Major Polis established that the Richland County Sherriff's Department received some seven hundred seventy (770) calls originating from Obama Mart over a two-year period ending the day

before the hearing (that is, 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. His testimony demonstrated the significant drain on law enforcement resources. The Sheriff's 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.

Polis reported that the Sheriff's Office arrested more than one hundred individuals, but often no one from Obama Mart appeared to testify at the prosecutions of those arrested. (Counter to Petitioner's allegations in paragraphs 23 and 24.)

The protestants from the neighborhood reported seeing individuals leaving Obama Mart while drinking from containers in bags, women soliciting or negotiating for prostitution or engaged in what appeared to be prostitution and in other illegal activities. Protestants also testified that employees did not come out of the store to discourage illegal behavior on their premises. Public intoxication and indecent exposure occurred on the premises as observed by the protestants.

The Court found these facts based on the consistency in the testimony provided by Major Polis and the protestants.

As the Court held in its original order, the question before the Court is whether Petitioner 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.

Of crucial importance to making this determination of a location's suitability is the burden on law enforcement. *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. § 61-4-580(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.” S.C. Code Ann. § 61-4-580(5) (2009 or Supp. 2020).

The Richland County Sherriff’s Department reported a large number of calls (770 over a two-year period) received with the Obama Mart as the focal point of the overall problem. 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 continued.

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. They emphasized the impact of these behaviors on the surrounding community.

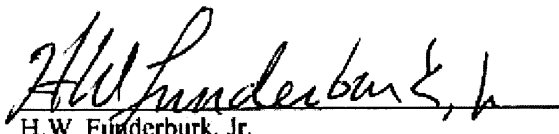
A protest may not be a sufficient reason to deny an application for a license or permit, especially when allegations of unsuitability are based on speculation. Here, however, the protestants, including law enforcement, provided evidence from direct observation and experience. As in *Kan Enters., Inc. 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.

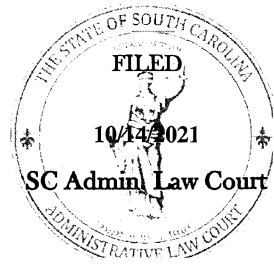
From the facts and conclusions of law, the Court holds that the Obama Mart is “no longer a suitable location for the off-premises sale of beer and wine.” *Id.* 803 S.E.2d at 888.

Accordingly, Petitioner, does not meet the statutory criteria for this permit to be renewed. It is, therefore, **ORDERED** that Petitioner’s Motion to Reconsider is **DENIED**.

AND IT IS SO ORDERED.

October 14, 2021
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge



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

CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served the **Order Denying Motion to Reconsider** 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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October 14, 2021
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