

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Aramark Sports & Entertainment)
Services, LLC,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Revenue,)
)
Respondent.)
_____)

Docket No.: 18-ALJ-17-0278-CC

FINAL DECISION AND ORDER

APPEARANCES: For the Petitioner: Burnet R. Maybank, III, Esquire
John P. Carroll, Esquire
For the Respondent: Dana R. Krajack, Esquire
Jason P. Luther, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court for a final decision and order following a contested case hearing requested by Aramark Sports & Entertainment Services, LLC (“Petitioner”). On June 11, 2018, Petitioner applied to the South Carolina Department of Revenue (“Department”) for an on-premises beer and wine permit, and liquor by the drink license pursuant to S.C. Code Ann. § 61-4-500 (2009) and § 61-6-1810 (2009) for the location at 1125 George Rogers Blvd., Columbia, South Carolina, 29201 (“Williams Brice Stadium”).

On August 14, 2018, the Department notified Petitioner that its application was denied. The Department specified the following reasons for denial: (1) Petitioner failed to provide information requested by the Department pursuant to § 61-2-90(6)(2009); (2) Petitioner failed to describe with particularity the specific area upon which the liquor, beer, or wine will be stored, sold, or served as required by S.C. Code Reg. 7-200.1(B) (Supp. 2017); (3) the proposed location is unsuitable as it does not meet the restaurant requirements of § 61-4-520(5)(2009); (4) the proposed location is not separate and distinct as required by § 61-6-1610 (2009 and Supp. 2017); and (5) public protests opposing the alcohol application based on the suitability of the location were filed. Petitioner immediately protested the Department’s denial on August 14, 2018. That

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very same day, the Department issued a Department Determination letter denying the application for the same reasons specified in its initial denial.

On August 14, 2018, Petitioner filed a Request for an Expedited Contested Case Hearing. On August 20, 2018, following notice to the parties and the protestant, this Court held a hearing on the matter. During the hearing, the Department and Petitioner notified the Court that they had reached an agreement stipulating that Petitioner had satisfied the above-referenced deficiencies. Consequently, the only remaining issue before the Court is the protestant's claim that the location is not suitable for the issuance of an on-premises beer and wine permit, and liquor by the drink license. After carefully weighing the evidence presented during the hearing, the Court finds that the location is suitable.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following findings of fact by a preponderance of the evidence:

1. Petitioner is a publicly-traded company with over 100,000 employees. Among other services, Petitioner provides food and beverage services for large sporting and concert events. On June 11, 2018, Petitioner applied for an on-premises beer and wine permit, and a liquor by the drink license for Williams Brice Stadium, a football stadium with a seating capacity of approximately 80,000 people.

2. As of the hearing date, Petitioner had contracted to provide food and beverage services for only one non-sporting event scheduled at Williams Brice Stadium—the Beyoncé and Jay-Z Concert held on August 21, 2018.

3. Viola Hendley filed a valid protest with the Department in opposition to Petitioner's application. Ms. Hendley lives within a two-mile radius of Williams Brice Stadium. Ms. Hendley expressed great concern for the public's safety if Petitioner's permit and license were granted. More specifically, Ms. Hendley worried about underage and excessive drinking at concert events. Ms. Hendley has not protested the issuance of any previous beer and wine permit, or liquor by the drink license for any other establishment near the Williams Brice Stadium.

4. South Carolina Law Enforcement Division ("SLED") Agent David Leslie testified about potential problems with alcohol enforcement at large sporting and concert events. Agent Leslie described general issues SLED Alcohol Enforcement agents face at large venues like

Williams Brice Stadium, such as underage drinking, over-consumption, and improper transfer of beverages. He also opined that it may become necessary to dispatch a significant amount of SLED Alcohol Enforcement agents to oversee concert events at Williams Brice Stadium concert events.

5. Randy Kaplan, Aramark General Manager for the University of South Carolina (“USC”) Sports Venues, testified about preventive measures Petitioner has undertaken to promote safety at events where alcohol is sold. For example, Petitioner requires all employees to undergo extensive training in a program titled “Techniques for Effective Alcohol Management.” This training aids workers in recognizing overconsumption and fake driver’s licenses, and employees are tested on the training material and must be certified prior to working any event. Mr. Kaplan also testified that cashiers are only permitted to sell two alcoholic beverages per transaction and identification is checked prior to each sale. Petitioner also employs its own alcohol enforcement officers for the safety of the venue’s guests.

6. Lieutenant Michael Scott Ellis, with the USC Division of Law Enforcement and Safety, testified about the combined effort by numerous law enforcement agencies and first responders to ensure the public’s safety during Williams Brice Stadium events. According to Lieutenant Ellis, representatives from USC meet with county and city agencies to formulate “safety plans” tailored to each event. A typical plan places law enforcement officers throughout the stadium and parking lots, in addition to private security guards at ticket-taking counters and gate entrances. Law enforcement officers also aid in the management of traffic.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

1. S.C. Code Ann. § 1-23-600 (Supp. 2017) grants jurisdiction to the Administrative Law Court to hear contested cases under the Administrative Procedures Act. The Administrative Law Court also has exclusive jurisdiction to adjudicate contested matters involving the regulation of alcoholic beverages under Title 61 of the South Carolina Code. § 61-2-260 (2009)

2. The weight and credibility assigned to evidence presented at a hearing is within the province of the trier of fact. *S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness’s demeanor and veracity and to evaluate the credibility of his testimony. *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996) (citing *McAlister v.*

Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982)). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. *Anonymous v. State Bd. of Med. Exam’r*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988) (quoting 2 Am.Jur.2d *Administrative Law* § 363 (1994)).

3. The Department is charged with the responsibility of administering the laws and regulations governing the sale of beer, wine, and alcoholic liquors in South Carolina. S.C. Code Ann. §§ 61-2-20, -80 (2009). Members of the public may submit to the Department written protests against the issuance of a beer and wine permit, and liquor by the drink license if the protestant complies with the requirements of the statute in rendering the protest. § 61-6-1825 (2009).

4. In order to obtain a beer and wine permit or liquor by the drink license, the proposed location must be proper. § 61-4-520(5); *see Schudel v. S.C. Alcohol Beverage Control Comm’n*, 276 S.C. 138, 142, 276 S.E.2d 308, 310 (1981).

5. “Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit. *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 596, 281 S.E.2d 118, 120 (1981) (citing *Smith v. Pratt*, 258 S.C. 504, 189 S.E.2d 301 (1972)). In determining whether a proposed location is suitable, the Court may consider any evidence that shows adverse circumstances of the location. *Kearney v. Allen*, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985) (citing *Pratt*, 258 S.C. 504, 189 S.E.2d 301). Suitability “involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact on the community wherein it is to be situated.” *Id.* (citing *Schudel*, 276 S.C. 138, 276 S.E.2d 308).

6. Without sufficient evidence of an adverse impact on the community, a license application must not be denied if the statutory standards are satisfied. *See* 48 C.J.S. *Intoxicating Liquors* § 196 (2017). The fact that the issuance of a license is protested is not a sufficient reason, by itself, to deny the application. *Id.* Moreover, the denial of a license to an applicant on the ground of unsuitability of location is without evidentiary support when relevant testimony of those opposing the requested license or permit consists entirely of opinions, generalities, and conclusions not supported by the facts. *Taylor v. Lewis*, 261 S.C. 168, 171, 198 S.E.2d 801, 802 (1973).

7. Following a careful review of the evidence presented in this matter, including Ms. Hendley’s statement of protest, I find there is no legal basis to conclude that Williams Brice

Stadium is unsuitable for the issuance of the requested permit and license. Ms. Hendley's protest rests primarily on her concerns for the public's safety. While she cited several studies to support her apprehensions, the majority of Ms. Hendley's protest consisted of her own personal opinions. The studies referenced by Ms. Hendley had general applicability to all recreational events where alcohol is consumed and failed to indicate that Petitioner's methods to curb over-service and underage drinking would be ineffectual.

In determining that the location is suitable for the issuance of the permit and license, this court considered the fact that alcohol is currently being sold at Williams Brice Stadium. Additionally, during their testimony, Mr. Kaplan and Lieutenant Ellis addressed several of the concerns expressed by Ms. Hendley and SLED Agent Leslie. The Department and Petitioner have also agreed that Petitioner can only sell liquor in designated areas and only during non-sporting events.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court finds that Williams Brice Stadium is suitable for the issuance of an on-premises beer and wine permit, and liquor by the drink license.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the location at 1125 George Rogers Blvd., Columbia, South Carolina, 29201 is suitable for an on-premises beer and wine permit, and liquor by the drink license.

IT IS FURTHER ORDERED, pursuant to S.C. Code Reg. 7-200.1 (I) (Supp. 2017), that any written stipulation or agreement entered into for the subject permit and license between the Department and Petitioner must be complied with fully. Any knowing violation of the terms of the stipulation or agreement shall constitute sufficient grounds to revoke the subject permit and license.

AND IT IS SO ORDERED.



SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

August 27, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Intergovernmental Mail Service addressed to the party(ies) or their attorney(s).
This 27 day of August 2018
By [Signature]
Judicial Law Clerk