

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Dec 08 2022

S.C. SUPREME COURT

Appeal from Horry County
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity, Circuit Court Judge

Case No. 2022-000134

Andrew Waldo; Jane Zheng; and SC Coast Properties, LLC
d/b/a Keller Williams Realty Petitioners,

vs.

Michael Cousins; Founders Five, LLC d/b/a Sperry Van Ness Founders
Group; and South Carolina Association of REALTORS® Respondent.

**SOUTH CAROLINA ASSOCIATION OF REALTORS® RETURN IN SUPPORT OF
MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
BY NATIONAL ASSOCIATION OF REALTORS®**

The Respondent, South Carolina Association of REALTORS® (“SCAR”), files this reply in support of the motion to file an *amicus curiae* brief by the National Association of REALTORS® pursuant to S.C. R. App. P. 240(f). The standard for filing an *amicus curiae* brief under either the South Carolina Rules of Appellate Procedure or the Federal Rules of Appellate Procedure is the same. Fed. R. App. P. 29; S.C. R. App. P. 213. The *amicus* must identify an interest in the case and why an *amicus curiae* brief is desirable.¹ The National Association of

¹ When considering a South Carolina rule, which is substantially the same as a federal rule, state courts will take guidance from cases interpreting the similar federal rule. *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016); *Gardiner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

REALTORS® meets the requirements for an *amicus curiae* party and the opposition of Petitioners simply does not address the standard.

The appellate courts of South Carolina normally grant petitions for *amicus curiae* briefs because they allow a full discussion of all issues. *See, e.g., Savannah Riverkeeper v. South Carolina Dept. of Health and Environmental Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 909 (2012) (dissent by Justice Kittredge noting the standard practice to accept *amici* briefs). The federal appellate courts generally grant motions to file *amicus curiae* briefs even in cases that are then decided on the record and briefs without oral argument or dismissed on jurisdictional grounds. *See, e.g., Schafer v. Citibank, N.A.*, 447 Fed. Appx. 466 (4th Circuit 2011) (*amicus* brief considered and *amicus* made a party when case decided without oral argument on the record and briefs); *Barr v. Virginia Alcohol Beverage Control*, 710 Fed. Appx. 141 (4th Circuit 2018) (initial *amicus* brief accepted and *amicus* made a party despite unpublished opinion dismissing for lack of jurisdiction due to late filing of notice of appeal and rejection of *amicus* request for a reply brief).

As the record in this action and the brief of the National Association of REALTORS® (“NAR”) reflect, the NAR provides its members a mandatory arbitration process that quickly and inexpensively resolve disputes. The arbitration process includes all state and local REALTOR® associations and has for decades. The NAR Code of Ethics and Arbitration Manual represents one of the earliest and broadest arbitration systems, saving parties time and money and relieving over crowded court dockets. Thousands of arbitrations move through the system over the decades and the NAR system represents a paradigm of success in achieving arbitration’s goals. Reversing the Court of Appeals would make South Carolina an outlier and increase the length, cost, and court

involvement, undermining NAR's long functioning and successful alternative dispute resolution process.²

For these reasons, the Motion to File *Amicus Curiae* Brief of NAR should be granted and NAR should be added to the caption of this appeal as an *amicus* party.

Respectfully submitted,

s/ Marcus Angelo Manos

Marcus Angelo Manos, SC Bar No. 11876
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900
Facsimile: 803.253.8277
MManos@nexsenpruet.com

Attorneys for Respondent
South Carolina Association of REALTORS®

December 8, 2022

Columbia, South Carolina

² Court across the nation recognize the broad application and efficacy of the mandatory NAR arbitration procedure for all REALTORS®. *Lane v. Urgitus*, 145 P.2d 672, 679-82 (Colo. 2006); *First Weber Group, Inc. v. Synergy Real Est. Grp., LLC*, 361 Wis.2d 496, 527, 860 N.W.2d 498, 514 (2015); *Hedges v. Carrigan*, 117 Cal.App.4th 578, 586-87, 11 Cal.Rptr.3d 787, 793-94 (2004) (Membership in NAR and use of NAR forms enough to bring litigation between REALTORS® within interstate commerce and Federal Arbitration Act).