REPLY BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-001353

Shady Moss Apartments,

Respondent

v.

Jeffery Rush, Appellant.

REPLY BRIEF OF APPELLANT

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I. The Respondent's argument fails to resolve conflicting and ambiguous terms within the statute.

The Respondent misinterprets the Appellants argument. The Respondent argues the Appellants seek a right to correct in all criminal issues. However, that is not the case. Mr. Rush was provided a Notice to Vacate stating this guest possessed drugs. He did not receive a Notice to Vacate pertaining to all criminal activity. The issue in our case is only whether a tenant gets an opportunity to cure if a guest violated the lease by possessing drugs. Under the plain language of 7 C.F.R. §3560.159, and the rules of interpretation, a tenant is required to obtain notice of the violation and an opportunity to correct. The Respondents arguments create absurdities and a surplusage in the regulation, which cannot occur. *S.C. Dept of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 261, 725 S.E.2d 480, 483 (2012); *In re Decker,* 322 S.C. 215, 219, 471 S.E. 2d 462, 463 (1995).

Respondent argues that 7 C.F.R. § 3560.159(d) "stands alone" because it addresses more severe criminal activity than just drugs. (Respondent's Initial Brief p. 10). This interpretation is unfounded. There is nothing within the plain language of the regulation, or in the accompanying comments and USDA handbooks, which support this position. The Respondents acknowledge subsection (d) includes drug activity, (Respondent's Initial Brief p. 11), and criminal activity is a violation of state and local laws. The Respondent fails to explain how subsection (d) differs from subsection (a)(2)(iii). 7 C.F.R. § 3560.159(a) already contains provisions on terminating a lease for drug related criminal activity,7 C.F.R. § 3560.159(a)(1)(iii), and violations of state and federal law, 7, C.F. R. §3560.159(a)(2)(iii). Interpreting subsection (d) as its own procedure for an eviction makes 7 C.F.R. § 3560.159(a)(1)(iii) and 7, C.F. R. §3560.159(a)(2)(iii) useless. This is not a permissible interpretation of the regulation as it creates an ambiguous and a surplusage part of the

statute.

Respondents continue to argue 7 C.F.R. § 3560.159(d) stands alone because subsections (b) and (c) do not involve a right to cure and therefore the right to correct doesn't apply to (d). This interpretation of the statute is incorrect as it relies on the belief that subsection (a) subsumes and controls the rest of the regulation. Subsection (a) does not control the regulation, but each section of the regulation must exist in harmony to avoid absurdity and superfluous language. *S.C. Dept of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 261, 725 S.E.2d 480, 483 (2012); *In re Decker,* 322 S.C. 215, 219, 471 S.E. 2d 462, 463 (1995).

7 C.F.R. § 3560.159(a) and (d) both cover drug violations in which the tenant is being evicted for. These subsections must be interpreted to not create absurdities. Respondents argue the impossibility for criminal activity to be corrected. However, it is possible for drug related criminal activity to be corrected. In this case, Mr. Rush is being evicted for a lease violation when his guest possessed drugs on the property and committed a crime off the property. The correction simply is for the Appellant to never have drugs in the home, and to never have this guest on the property again. This correction also aligns with the USDA's intentions to provide persons who violate a lease for drug related activity a second chance. See. 7 C.F.R. 3560.156(c).

The Respondent argues it is not absurd for subsection (d) to be on its own because it is more absurd for the USDA to want to provide additional chances for drug related criminal activity. The Respondent's support this argument citing two cases Housing Authority of Norwalk v. Brown, and Department of Housing and Urban Development v. Rucker. These cited cases are HUD cases as the Respondent highlights. Respondent Initial Brief p. 18. They do not interpret the USDA regulation at issue in our case. These are two different agencies with two different regulations. The USDA has stated their intent for tenants to have an opportunity to correct violations for drug related

criminal activity, and actions prohibited by state and local laws. *See* 7 C.F.R. 3560.156(c). *See also* Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs, 69 Fed. Reg. 69032 (Nov. 26, 2004).

Respectfully submitted,

July 24, 2023

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Jul 24 2023
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CERTIFICATE OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on Luther O. MacCuthen IV and R. Hawthorne Barrett by sending them an electronic copy addressed as follows:

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