

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

**Respondent South Carolina Workers' Compensation Commission's
Motion for Judicial Notice**

This appeal involves Appellants' request for \$13,461.76 in additional attorneys' fees following the resolution of a workers' compensation matter. In their Notice of Appeal, Appellants unilaterally and improperly named the South Carolina Workers' Compensation Commission ("Commission") as the party-Respondent to the appeal. However, as detailed in the Commission's Initial Brief, the Commission has *never* been a party in this case. Rather, the Commission is the Administrative Tribunal whose decision Appellants are challenging on appeal.

In its Initial Brief, the Commission has referenced the following document:

- **Exhibit A:** Excerpts from the Record on Appeal in *S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc.*, No. 24265 (S.C. Sup. Ct.).¹

Because Appellants never sought to join the Commission as a party prior to this appeal, the filings from this case were not presented below. Therefore, they cannot be included in the Record on Appeal. *See* Rule 210(c), SCACR. However, as set forth in the accompanying Memorandum, this Court should take judicial notice of Exhibit A.

Respectfully Submitted,

s/ John L. Warren III

Greg Harris, SC Bar #7859
Harris & Gasser, LLC
1529 Laurel Street
Columbia, South Carolina 29201
greg@harrisgasserlaw.com
(803)-779-7080

John L. Warren III, SC Bar #101414
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, South Carolina 29201
JW@billnettleslaw.com
(803)-814-2826

November 1, 2023

¹ The opinion in this case was published. *See S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc.*, 318 S.C. 546, 459 S.E.2d 302 (1995).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

**Respondent South Carolina Workers' Compensation Commission's
Memorandum in Support of Its Motion for Judicial Notice**

The South Carolina Workers' Compensation Commission ("Commission") asks this Court to take judicial notice of excerpts of the Record on Appeal—including two orders of the Commission—from *S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc.*, No. 24265 (S.C. Sup. Ct.) ("*Ray Covington Realtors*").

GOVERNING LAW

Judicial notice of adjudicative facts is governed by South Carolina Rule of Evidence 201. *See also* S.C. Code Ann. § 1-23-330(4) (providing for judicial notice in administrative proceedings). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of

accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 201(b), SCRE. Courts may take judicial notice “at *any* stage of the proceeding.” Rule 201(f), SCRE (emphasis added). When a party requests judicial notice and supplies the court “with the necessary information,” a court is required to take judicial notice of the adjudicative facts. *See* Rule 201(d), SCRE (“A court *shall* take judicial notice if requested by a party and supplied with the necessary information.” (emphasis added)).

It is axiomatic that “[a] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.” *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984); *see also* 21B Fed. Prac. & Proc. Evid. § 5106.4 (2d ed.) (collecting cases where courts took judicial notice of court records). Since the enactment of Federal Rule of Evidence 201, “federal courts notice the records of any court, state or federal.” 21B Fed. Prac. & Proc. Evid. § 5106.4 (2d ed.) & n.16. The Supreme Court of South Carolina has cited favorably cases interpreting Federal Rule of Evidence 201. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014).

DISCUSSION

Exhibit A contains excerpts of the Record on Appeal in a case decided by the Supreme Court of South Carolina, including orders from the Commission. The Commission offers Exhibit A for the sole purpose of explaining the procedural history of *Ray Covington Realtors* in the context of its argument that it is not a proper party to this appeal. No reasonable party can dispute the accuracy of these filings, as they are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”—i.e., the records of the Supreme Court

of South Carolina.¹ Rule 201(b), SCRE; *see also Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 491 n.3, 593 S.E.2d 480, 483 n.3 (Ct. App. 2004) (taking judicial notice of the American Arbitration Association’s rules even though the rules were not included in the Record on Appeal).

CONCLUSION

For the foregoing reasons, the Court should take judicial notice of Exhibit A.

Respectfully Submitted,

s/ John L. Warren III
Greg Harris, SC Bar #7859
Harris & Gasser, LLC
1529 Laurel Street
Columbia, South Carolina 29201
greg@harrisgasserlaw.com
(803)-779-7080

John L. Warren III, SC Bar #101414
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, South Carolina 29201
JW@billnettleslaw.com
(803)-814-2826

November 1, 2023

¹ Indeed, if this case was pending before the Supreme Court, judicial notice would be indisputably proper. *See Freeman*, 280 S.C. at 494, 313 S.E.2d at 327 (“A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.”). To reach a different result here would lead to an absurd result.

Exhibit A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

Carol Connor, Circuit Court Judge

Case No. 92-CP-40-4192

South Carolina Workers' Compensation Commission
and Ray Chewning, Jr., Respondents.

v.

Ray Covington Realtors, Inc. and South Carolina
Uninsured Employers' Fund, Defendants.

of whom

Ray Covington Realtors, Inc., is Appellant.

RECORD ON APPEAL

Benjamin C. Wofford, Esquire
Post Office Box 9402
Columbia, South Carolina 29290
(803) 776-8085
Attorney for Appellant

John W. Rabb, Jr., Esquire
Savage, Royall & Sheheen
Post Office Drawer 10
Camden, S.C. 29020-0010
(803) 425-4816
Attorney For Respondent,
Ray Chewning, Jr.

Kelly J. Golden
South Carolina Workers'
Compensation Commission
Post Office Box 1715
Columbia, S.C. 29202-1715
(803) 737-5749
Attorney For Respondent,
South Carolina Workers'
Compensation Commission

INDEX

<u>Orders:</u>	<u>Page</u>
Order of Judge Connor dated June 14, 1993	1
Order of the Appellate Panel dated September 9, 1992	2
Order of Commissioner Hunley dated April 22, 1992	4
Order of Commissioner Dunbar dated August 12, 1991	19
Order to Show Cause dated May 21, 1991	20

<u>Pleadings:</u>	
Form 50 of Respondent	21
Form 51 of Appellant	22
Form 30 of Appellant	23

<u>Transcript:</u>	
Transcript of Hearing of June 9, 1993	25
Oral Argument By Mr. Wofford	26
Oral Argument By Mrs. Golden	49
Oral Argument By Mr. Raab	59

Transcript of Hearing of February 10, 1992	62
--	----

Witness Ray Chewing

Direct Examination By Mr. Raab	67
Direct Examination By Mrs. Golden	81
Cross Examination By Mr. Wofford	86
Re-Direct By Mr. Raab	107
Re-Cross By Mr. Wofford	108
Re-Examination By Mr. Raab	141
Re-Cross by Mr. Wofford	144

Witness Ray Covington

Direct Examination By Mr. Wofford	109
Cross Examination By Mrs. Golden	113

INDEX

Witness Officer Dennis Reeder

Direct Examination By Mr. Wofford	120
Cross Examination By Mr. Raab	123
Examination By Commissioner Hundley	125
Re-Cross By Mr. Raab	128
Examination By Commissioner Hundley	129

Witness Maria Powell

Direct Examination By Mr. Wofford	130
Cross Examination By Mr. Raab	133

Witness Charlie Holloman

Direct Examination By Mr. Wofford	134
Cross Examination by Mr. Raab	136

Witness Kathy Canders

Direct Examination by Mr. Wofford	137
Cross Examination by Mr. Raab	139

Exhibits:

Defendant's Exhibit 1	146
Defendant's Exhibit 2	148
Defendant's Exhibit 3	150
Defendant's Exhibit 4	152
<u>Certificate of Counsel</u>	153
<u>Proof of Service</u>	154

CPNT COURT

CASE NO. 92CP404192

Ray Cheuring, Jr.

VS

Ray Covington Realtors
etal.

Plaintiff(s)

Defendant(s)

- Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the verdict rendered.
- Decision by court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- Action Dismissed. Rule 12(b), SCRPC Rule 40(c)(3), SCRPC
 Rule 41(a), SCRPC (Vol. Nonsuit) Settled **A T T E S T**
 Other, Explain: _____ **A TRUE COPY**

IT IS ORDERED AND ADJUDGED: See attached order
 Statement of Judgment by Court

Barbara A. Scott
C. C. C. P. & G. S. *cf.*

Commission affirmed

FILED
93 JUN 16 PM 3:15
BARBARA A. SCOTT
C.C.C. & G.S.

Dated at COLUMBIA, South Carolina, this 14th day of June, 1993.
Cavola
Judge

This judgment was entered on the _____ day of _____, 19____, and a copy mailed first class this 17 day of June, 1993, to attorneys of record or to parties (when appearing pro se) as follows:

<u>John W. Rabb, Jr. (claimant)</u>	<u>Benjamin Wolford</u>
<u>Kelly J. Golden (W/ass Comp)</u>	<u>Ray Ambrose</u>
	<u>Brooks Stealey (M/I fund)</u>

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Barbara A. Scott *why*
Clerk of Court

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC # 9056976

RAY CHEWNING, JR.,

EMPLOYEE,
CLAIMANT,

VS.

RAY COVINGTON REALTORS, INC.,
and S.C. UNINSURED EMPLOYERS' FUND,

DEFENDANTS

* * * * *

Appellate Panel Review held in Columbia, South
Carolina on July 29, 1992.

Appellate Panel Order issued: September 9, 1992

* * * * *

APPEARANCES: CLAIMANT-APPELLANT-RESPONDENT represented by
John W. Rabb, Jr. Camden, S. Carolina.
DEFENDANT-APPELLANT-RESPONDENT represented by
Benjamin Wofford, Esq. Columbia, S. Carolina
and Attorneys Kelly Golden and Ray Ambrose.

* * * * *

A Hearing was held in Camden, South Carolina on February 10,
1992 to determine the issues in Forms 50/51 and a determination
of jurisdiction. By date of April 22, 1992 the Hearing
Commissioner issued an Order as follows:

IT IS, THEREFORE, ORDERED that the Employer/Carrier
shall pay to the Employee temporary total benefits in
the amount of \$95.79 per week for the period of April
7, 1990 through April 17, 1991. The issue of permanent
disability is premature for determination.

IT IS FURTHER ORDERED that the Defendant/Carrier shall
pay all causally related medical, hospital, surgical,
doctors' and nurses' bills, prescription drug bills and
any other causally related medical expenses which have
been incurred by the Claimant from the date of this injury,
April 6, 1990 to the present.

Within the statutory period, a cross appeal was filed with
counsel for the defendants stating that the Commissioner erred in
finding that the Claimant was an "employee" of Ray Covington

Realtors Inc., as the term is defined under S.C. Code Ann. 42-1-230 and in finding that all real estate salesmen licensed with Ray Covington Realtors, Inc., were "employees."

Concurrently, counsel for the claimant filed an appeal primarily on the basis that the Commissioner erred in finding that the evidence concerning additional compensation of \$75.00 per week was too speculative to include in the computation of the average weekly wage.

The Appellate Panel, after hearing able argument of counsel and after consideration of all the evidence is of the opinion that the Hearing Commissioner was correct in his Findings of Fact, Conclusions of Law, and Order.

ORDER

The Order of the Single Commissioner issued April 22, 1992, incorporated by reference as if set forth verbatim herein, is hereby affirmed by the Appellate Panel and same shall constitute the Order of the Appellate Panel.

S.C. WORKERS' COMPENSATION COMMISSION

William Clyburn
William Clyburn, Commissioner
for the Appellate Panel

CONCUR:
Thomas M. Marchant III, Commissioner
David W. Huffstetler, Commissioner

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, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 9th day of September, 1992

3 BY *Eric O. Dean*
Administrative Assistant

ORDER

OF

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER 9056976 AND
COMPLIANCE FILE NUMBER X-910058

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION,

PLAINTIFF,

AND

RAY CHEWNING, JR.,

EMPLOYEE/CLAIMANT

VS.

RAY COVINGTON REALTORS, INC.,

UNINSURED EMPLOYER,

AND

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND,

CARRIER, DEFENDANTS.

Hearing:

Held in Camden, South Carolina, on
February 10, 1992.

Appearances:

Claimant represented by John Rabb,
Esquire, of Camden, South Carolina.

Employer represented by Benjamin
Wofford, Esquire, of Columbia, South
Carolina.

South Carolina Workers' Compensation
Commission represented by Kelly J.
Golden, Esquire, of Columbia, South
Carolina.

South Carolina Uninsured Employers' Fund
represented by Ray Ambrose, Esquire, of
Columbia, South Carolina.

Purpose of Hearing:

To determine the issues set forth in
Forms 50 and 51 and a determination of
jurisdiction.

Decision and Order:

By R. Walter Hundley, Commissioner

Filed:

April 22, 1992

STIPULATIONS

Counsel for the parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine jurisdiction over the Defendant and to determine the issues set forth in the hearing notice and issues pled in the Forms 50, 51. The Employer stipulates it did not have insurance for workers' compensation liabilities.

2. Notice of the hearing was timely and properly served upon all parties of interest.

3. At issue for determination is the Claimant's average weekly wage and compensation rate.

4. Venue set in Kershaw County is proper as agreed by all parties.

5. Neither the Employer nor any of its alleged employees have filed notices of rejection of the Workers' Compensation Act.

6. The Employer stipulates that it had at least three (3) employees as defined under the Workers' Compensation Act. The Employer stipulates that its salesmen are similarly situated factually to Claimant Chewing.

7. Stipulated for determination as fact and law is whether the Defendant's sales force, consisting of six (6) real estate salesman in 1989 and eight (8) real estate salesmen in 1990, are employees under the Workers' Compensation Act, thereby

EVIDENCE OF THE CASE

A. The following witnesses testified on behalf of the Claimant:

1. Ray Chewning, Jr., the Claimant, testified that he became employed by Ray Covington Realtors in August of 1989 and was hired by Ray Covington. He was hired as a real estate agent and at that time he was licensed as a real estate agent. Claimant testified he was paid on a commission basis determined by Mr. Covington and was hired for an indefinite period of time. Mr. Chewning further testified that he worked out of Ray Covington Realty's office and was required to attend weekly sales meetings as well as to tour listings and also house sit and operate open houses. Claimant further testified that all office equipment, business cards, telephone service, secretarial service, paper, pens, forms, contracts, etc. were all provided by the Defendant/Employer. Mr. Chewning also testified that it was his opinion that Mr. Covington could fire him if he so desired.

Claimant further testified that on April 6, 1990 he was an employee of Ray Covington Realty. Claimant testified that he had scheduled an appointment in Camden to meet with Bob Pettis to discuss a contract on a piece of real estate owned by Mr. Pettis. The property was listed with Sheheen, Brantley and Associates, but the Claimant was attempting to sell the property and obtain a commission for Ray Covington Realty. Claimant testified that after a conversation with Mr. Pettis

they arranged to meet in Camden after work, but the Claimant was unsure what time, although he testified he believed the meeting was to take place at 6:00 p.m. or so. Claimant testified that he took I-20 from Columbia to Camden that afternoon to meet Mr. Pettis. The weather conditions were foggy and misting rain, and generally very poor. Claimant testified he was between the 521 exit and the 601 exit on I-20 when he thought he saw a deer. Subsequently, the Claimant, apparently taking evasive action, lost control of the vehicle. The Claimant testified he remembers he jerked the wheel and that it went off the road and hit one time and has no recollection thereafter. He further testified he kept waking up in the bushes until he believes a Kershaw County Deputy discovered his vehicle. Claimant testified he believes he was on the scene for a long time before he was actually discovered by the deputy.

Next, Claimant testified that as a result of the accident he sustained a ruptured spleen, broken clavicle, nerve damage to his left arm, severe damage to his left leg and ankle. Claimant further testified he had undergone a number of surgeries to his ankle and believes his last treatment by Dr. Jeffrey Heavilon was in the summer of 1991. At that time, Claimant testified he had been presented with two options in regard to his left foot. One being a very technical procedure called an ilizaroz procedure, the other option being amputation.

Claimant also testified that during the time period he was employed by Covington Realty he was also working

making the Defendant a non-exempt employer under the Act pursuant to S.C. Code §42-1-360.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

- APA #1. Reports of Dr. Peter Haines
- APA #2. Reports of Dr. Kim Chillag
- APA #3. Reports of Dr. Jeffrey Heavilon
- APA #4. Reports of Dr. Herbert Neistat
- APA #5. Reports of Dr. Ralph Owens
- APA #6. Reports of Richland Memorial Hospital
- APA #7. Deposition of Mr. Bob Pettis

STATEMENT OF THE CASE

This matter arose upon the Employee's notice to the Commission of an alleged work-related injury occurring April 6, 1990. The Employee seeks temporary total disability benefits and additional medical treatment, as well as payment of all medical expenses incurred. The Employer contends that it is exempt under the provisions of the Workers' Compensation Act, specifically alleging that its real estate salesman are independent contractors and not employees. The Coverage and Compliance Department of the South Carolina Workers' Compensation Commission alleges that the Defendant's salesman are employees and, as such, the Defendant is not exempt from the Workers' Compensation Act.

part time for Metro Mobile. Claimant testified he was selling car phones for Metro Mobile and testified that on an average he would make approximately \$75.00 per sale and he usually averaged one phone sale per week. Claimant testified that these sales were only incidental to his real estate work and that he did not go out and solicit sales explicitly. Finally, Claimant testified that Ray Covington Realty was aware of the real estate deal being handled by Mr. Chewning with the property owned by Bob Pettis. He further testified that subsequent to the accident and after he had recovered somewhat, the deal finally did close and a commission was realized by the Employer/Carrier, Ray Covington Realty, out of the sale of the property. Claimant further testified at the time of his accident, most of the work had been done on putting the deal together and both parties were in basic agreement at the time.

Claimant testified that he had a large number of outstanding medical bills unpaid, and that he had not received any temporary total compensation and was in need of further medical treatment in his opinion.

2. The deposition of Mr. Bob Pettis was submitted on behalf of the Claimant.

B. No witnesses were presented on behalf of the South Carolina Workers' Compensation Uninsured Employers' Fund.

C. The following witnesses testified on behalf of the Defendant/Employer.

1. Ray L. Covington, Jr. Mr. Covington testified

that he had been employed as a real estate broker for ten years and currently by Ray Covington Realtors, Inc. He further testified that he employed the Claimant on a commission basis and as such did not withhold any federal income tax, FICA tax, nor state income tax from his pay checks. Finally, Mr. Covington testified that he had not reviewed the contract concerning the property in question owned by Bob Pettis.

2. Dennis Reeder, S. C. Highway Patrol Trooper, testified that he investigated the accident in question on April 6, 1990. He testified that he was dispatched to the scene at 10:58 p.m. He testified there were some EMS personnel already on the scene when he arrived. He further testified that upon arriving at the scene he discovered that the vehicle was being driven by Mr. Chewning, that Mr. Chewning was on the ground and hurt. He further testified that the vehicle itself was approximately 150 feet off of the road at the bottom of a hill. He testified he did not know an exact time when the accident happened but that he talked with Mr. Chewning at the hospital and as a result estimated the accident happened at approximately 10:10 p.m. However, the trooper then testified on cross examination that he did not remember exactly what he said to Mr. Chewning or what Mr. Chewning said to him. However, the trooper later testified he did not remember where he talked to Mr. Chewning or exactly when he talked to Mr. Chewning.

The trooper further testified that the area where the vehicle was discovered is a fairly wooded area. He

went on to testify that it was a very rainy, foggy, nasty night, and visibility was not very good.

3. Ms. Ann Marie Powell testified that she was a realtor at Ray Covington Realtors, Inc. and had been for approximately two and one-half years. She testified on Sunday night, April 8, she came home and checked the messages on her answering machine. Subsequently, she checked her messages on her car phone. She testified there were two messages from Mr. Chewing on the afternoon of Friday, April 6. The first message was between 4:00 and 5:00 and the second between 6:00 and 7:00. The first message indicated that Mr. Chewing was at Yesterday's and asked her to come down and have a few drinks. The second message Ms. Powell guesstimated occurred about 6:30 or 7:00. Ms. Powell did not testify as to the substance of the second conversation and could not testify personally as to where the call was placed from.

4. Charles Holloman testified that he was renting a store from Bob Pettis and wanted to buy it from him. Mr. Holloman testified that he could not recall anything about April 6, 1990 and specifically had no recollection whether there was a meeting between Mr. Chewing and Mr. Pettis that day or not. He further testified it is possible a meeting could have been set up that day.

5. Cathy Canders testified that she was a secretary for Ray Covington Realty and was responsible for keeping all of the books and other records, including contracts. She

testified that after reviewing the file on the property in question, she found two contracts which were not executed and one contract dated April 4, 1990 which was executed.

FINDINGS OF FACT

Based upon the foregoing, and pursuant to S.C. Code §42-17-40, the undersigned Commissioner enters the following findings of fact:

1. The Defendant's real estate salesmen worked for an indefinite period of time;
2. The Defendant determined the amount of each salesman's commission;
3. The salesmen work in the Defendant's offices, attending weekly sales meetings;
4. The salesmen tour new listings and house sit and operate open houses;
5. The salesmen have no investment in the business;
6. The Defendant supplies all office equipment and business cards bearing the salesman's and Defendant's names;
7. The Defendant provides telephone systems and equipment, secretarial services, paper, and pens, along with forms, contracts, advertising, and other tools of the trade necessary to perform the Defendant's business; and
8. The Defendant relied upon the salesmen to perform the Defendant's trade and business.
9. Claimant Chewning is similarly situated factually to the Defendant's real estate salesmen as stipulated.

10. Defendant had an oral agreement with its salesmen to perform the duties of real estate sales.

11. The business relationship of the broker-in-charge, brokers and their salesmen is regulated and determined by S.C. Code §40-47-10, et seq., and Chapter 105 of the S.C. Code of Regulations.

12. Ray Covington, Jr., was the broker-in-charge as defined in S.C. Code §40-57-10(1) (1990, as amended), and the salesmen were employed under agreement by the broker-in-charge.

13. The issue of control exercised by the Defendant over its salesmen is statutorily defined by S.C. Code §40-50-90 (1991, as amended), which provides "a real estate salesman must be employed by a real estate broker-in-charge in order to be licensed". The Defendant's salesmen were licensed pursuant to that provision.

14. The salesmen worked under the authority of Ray Covington, Jr., and the salesmen could not be licensed with more than one (1) broker-in-charge during the same period of time; the salesmen could not commence work until they received a pocket card issued by the Real Estate Commission from their broker-in-charge; when the salesmen left the broker-in-charge for any reason, the broker-in-charge was required to notify the Commission by letter reporting the termination, all of which is required in S.C. Code Regulations 105-17 (1991, as amended).

15. During the period at issue, the South Carolina Real Estate Commission retained the right to suspend, revoke, or

cancel any license issued under the provisions of Title 40 concerning real estate salesmen and assess a fine at any time where a licensee had been found guilty of (1) representing or attempting to represent, if a salesman, a real estate broker other than his employer without the express knowledge and consent of his employer, and (2) violating any regulation promulgated by the Commission. S.C. Code §40-57-170(a)(7) and (18).

16. The aforementioned statutes and regulations were complied with by the Defendant and its salesmen.

17. The work being done by the salesmen was an integral part of the regular business of the Employer. The worker/salesmen did not furnish an independent or professional service.

18. The Claimant sustained injuries by accident arising out of and in the course and scope of his employment on April 6, 1990.

19. I find that an average weekly wage of \$143.69 resulting in a compensation rate of \$95.79 is applicable.

20. I find that there was testimony of additional compensation of \$75.00 per week; however, I find such evidence was too speculative to include in the computation of the Claimant's average weekly wage and resulting compensation rate.

21. I find that the evidence as presented was insufficient to establish intoxication of the Employee/Claimant as a defense.

22. I find that the Claimant is entitled to temporary total benefits from April 7, 1990 until April 17, 1991 at which time the Claimant justifiably refused additional medical treatment. I further find that such justifiable refusal of additional medical treatment precludes a determination of permanent partial or permanent total disability as premature for determination.

23. The Employer/Carrier should be responsible for all medical bills, prescription drug bills, and all other causally related expenses incurred as a result of this accident.

CONCLUSIONS OF LAW

Based upon the foregoing, the undersigned Commissioner concludes as a matter of law that:

A. All findings of fact more properly denominated conclusions of law are incorporated herein as if set forth verbatim.

B. The traditional test of employment, the control test, is sufficiently met by the Defendant's exercise or the right to exercise control over its salesmen. Young v. Warr, 252 S.C. 179, 165 S.E. 2d 797 (1969).

C. The effect of the regulatory license scheme for real estate salesmen imputes control to the Defendant absent any evidence to the contrary. Hughes v. Industrial Commission, 113 Ariz. 517, 558 P2d 11 (1976).

D. The effect of regulations imputing control to an employer requires a finding that the individual real estate salesmen were employees rather than independent contractors.

DeBerry v. Coker Freight, et al., 234 S.C. 304, 108 S.E. 2d 114 (1959).

E. The relative nature of the work test requiring the Commission to consider whether the work done is an integral part of the employer's regular business and whether the worker in relation to the employer's business is in a business or profession of his own requires a finding of Employee/Employer relationship. Gordon v. New York Life Insurance Company, 300 N.Y. 652, 90 N.E. 2d 989 (1950). Neither the salesmen nor the Claimant were independent businessmen, nor were they engaged for a single project. Absent an independent enterprise, the nature of the business test supports a finding the salesmen are employees for purposes of determining jurisdiction.

F. The real estate salesmen are employees pursuant to S.C. Code §42-1-130, which provides that the term "employee" means any person "engaged in an employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written . . . excluding a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer . . ." A worker doing the work of its employer is an employee unless it is shown that the worker is specifically excluded from the Act. Barr v. Town & Country Properties, Inc., 240 Va. 292, 396 S.E. 2d 672 (1990).

G. S.C. Code §42-1-375 (1990) is applicable prospectively and does not affect the rights and liabilities of the Defendant prior to the statute's adoption April 24, 1990.

Bartley v. Bartley Logging Co., 293 S.C. 88, 359 S.E. 2d 55 (1987).

H. Section 42-1-375 is inapplicable to the case at hand as it was enacted into law subsequent to the date of injury, April 6, 1990. However, assuming arguendo, that the statute is applicable I find as a matter of law that Defendant failed to establish an exemption under §42-1-375.

I. The Defendant's real estate salesmen, including the Claimant, were employees of the Defendant.

J. The Defendant is not exempt under §42-1-360 in that it engaged four (4) or more persons on a regular basis to perform its trade or business and its payroll was in excess of Three Thousand and no/100 Dollars (\$3,000.00).

K. The Defendant is not exempt by virtue of filing a notice of rejection, nor are its salesmen/employees exempt by virtue of filing notices of rejection.

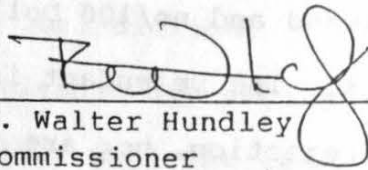
L. Under §41-1-160 the Claimant sustained injuries by accident arising out of and in the course and scope of his employment. Pursuant to §42-9-30 the Claimant is entitled to temporary total benefits from April 7, 1990 to April 17, 1991. Pursuant to §42-15-60 the Employer/Carrier shall be responsible for all outstanding medical bills, prescription drug bills, and any other causely related medical expenses as a result of this accident.

ORDER

IT IS, THEREFORE, ORDERED that the Employer/Carrier shall pay to the Employee temporary total benefits in the amount of \$95.79 per week for the period of April 7, 1990, through April 17, 1991. The issue of permanent partial disability is premature for determination.

IT IS FURTHER ORDERED that the Defendant/Carrier shall pay all causally related medical, hospital, surgical, doctors' and nurses' bills, prescription drug bills and any other causally related medical expenses which have been incurred by the Claimant from the date of this injury, April 6, 1990, to the present.

AND IT IS SO ORDERED.



R. Walter Hundley
Commissioner

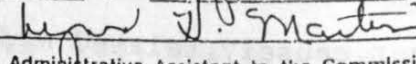
Columbia, South Carolina

April 22, 1992

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order by first class mail upon all parties to this case. A copy hereof, postage paid, is being mailed and addressed to the attorney or other person in charge.

This 25th day of April, 1992.

BY: 

Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 SOUTH CAROLINA WORKERS')
 COMPENSATION COMMISSION)
)
 vs.)
)
 RAY COVINGTON REALTORS,)
 INC.)

ORDER TO SHOW CAUSE

Compliance File No. X-910058

TO: RAY COVINGTON REALTORS, INC.

YOU ARE HEREBY ORDERED to appear before Commissioner Vernon F. Dunbar, of the South Carolina Workers' Compensation Commission in the Hearing Room, 1612 Marion Street, Columbia, South Carolina, on the 1st day of July, 1991, at 10:00 a.m., to show cause why you should not be found in violation of the provisions of the South Carolina Workers' Compensation Law in your failure to maintain proper workers' compensation coverage for your employees during the years of 1989 and 1990.

SOUTH CAROLINA WORKERS'
 COMPENSATION COMMISSION

Vernon F. Dunbar

Columbia, South Carolina

MAY 21 1991

cc: Ms. Kelly J. Golden
 Staff Attorney
 SC Workers' Compensation Comm.
 1612 Marion Street
 Columbia, SC 29202-1715

cc: Ray Chewing
 2012 N. Broad Street
 Camden, SC 29020

cc: Ms. Linda Manor
 SC Uninsured Employer's Fund
 Koger Center
 Winthrop Building, Suite 119
 220 Executive Center Drive
 Columbia, SC 29210

cc: John W. Rabb, Jr., Esq.
 Post Office Drawer 10
 Camden, SC 29020

South C
 P.O. Box
 Columbia

Ray
 Claimant's N
 2012
 Address
 (803)
 Home Phone

Complete
 checking t
 A claim fo
 .1a.

1b.

2.

3.

4.

5.

6.

7.

8.

9.

10a.

10b.

11a.

11b.

11c.

12.

13a.

13b.

Signature

Refer to
 the Com
 WCC F8

RECEIVED

Nov 01 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

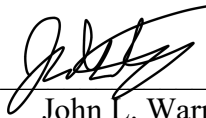
Respondent.

PROOF OF SERVICE

The undersigned employee of Law Office of Bill Nettles, attorney for Respondent South Carolina Workers' Compensation Commission, does hereby certify that service of the Motion for Judicial Notice, Memorandum in Support of Motion for Judicial Notice, and Exhibit A to Motion for Judicial Notice was made upon all counsel of record by electronic mail to:


- Preston F. McDaniel: preston@pfmcdlaw.com
- John M. Milling: johnmilling@bellsouth.net

By: _____


John L. Warren

November 1, 2023



From: John Warren jw@billnettlelaw.com 
Subject: Cartee v. SCJD - Initial Brief, Designation of Matter, and Motion for Judicial Notice
Date: November 1, 2023 at 10:57 PM
To: preston@pfmcdlaw.com, [John Milling johnmilling@bellsouth.net](mailto:JohnMilling@bellsouth.net)
Cc: [Greg Harris greg@harriggasserlaw.com](mailto:GregHarris@harriggasserlaw.com)

Preston and John,

Please find attached the following documents, which will be filed with the Court of Appeals this evening:

- Respondent's Initial Brief
- Respondent's Designation of Matter to be Included in the Record on Appeal
- Respondent's Motion for Judicial Notice and Memorandum of Law in Support

Best,

-John Warren

John L. Warren III
Law Office of Bill Nettles
2008 Lincoln St.
Columbia, SC 29201
(803) 814-2826

**Motion for Judicial Notice,
Memorandum in Support, Exhib...**
6.5 MB



**Respondent's Designation of
Matter and Proof of Service.pdf**
190 KB



**Respondent's Initial Brief and
Proof of Service.pdf**

