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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

RECEIVED

JUL 25 2013

Case No. 13-ALJ-22-0095-AP

SC Court of Appeals

Tanya A. Vaughan-Youmans.....Appellant,

v.

South Carolina Department of Employment and Workforce
and Darby Realty Company, Inc..... Respondents.

Motion to Dismiss Appeal or, in the Alternative, Affirm the Administrative Law Court's Decision Pursuant to Rule 220(c), SCACR, by Respondent Darby Realty Company, Inc.

Respondent Darby Realty Company, Inc. ("Darby") hereby moves this Court to dismiss the appeal filed by Appellant Tanya A. Vaughan-Youmans ("Appellant") for her failure to timely serve the notice of appeal on the Administrative Law Court ("ALC") as required by Rule 203(b)(6), SCACR.

In the alternative, Darby moves the Court to dispense with further briefing and decide this appeal under Rule 220(c), SCACR, based on the Appellant's initial brief and the ALC's Order of Dismissal, which together establish that Appellant failed to appeal all grounds supporting the ALC's decision. Consequently, the ALC's decision should be affirmed under the "two-issue" rule and the law of the case doctrine.

I. Appellant's appeal should be dismissed for her failure to timely serve the ALC with the notice of appeal pursuant to Rule 203(b)(6), SCACR.

Rule 203(b)(6), SCACR, provides, in pertinent part: "When a statute allows a decision of

the administrative law court . . . to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the . . . the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision.” Likewise, section 1-23-610(A)(1) of the South Carolina Code provides: “For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases *and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge.*” (emphasis added).

“The key jurisdictional provision of the appellate court rules is found in Rule 203, SCACR, which became effective on May 3, 2007.” Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 96, 668 S.E.2d 795, 797 (2008). “Rule 203, as it now reads, provides *a jurisdictional requirement to serve the agency within thirty days.*” Id. at 96, 668 at 797-98 (emphasis added). “Rule 203(d)(2)(B), provides in part that “[t]he notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6) . . . accompanied by . . . [p]roof of service showing the notice has been served on the agency.” Id. at 96, 668 S.E.2d at 798 (quoting Rule 203(d)(2)(B)).

“If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.” Rule 203(d)(3), SCACR. “The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal under Rules 203 and 243* may be extended” Rule 263(b), SCACR.

Appellant’s notice of appeal represents that she received the ALC’s decision on June 19, 2013. Ex. 1, Notice of Appeal. Appellant’s proof of service indicates that she served the

respondents' counsel of record with the notice of appeal, but does not indicate she served the ALC. Ex. 2, Proof of Service. Under these circumstances, Rule 203(d)(3), SCACR, and the Supreme Court's decision in Skinner mandate dismissal of this appeal as untimely.¹

II. Pursuant to Rule 220(c), SCACR, Appellant's appeal should be dismissed because her initial brief fails to challenge all grounds for the ALC's decision.

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. The order or decision being appealed is part of the Record on Appeal. See Rule 210(c), SCACR. A motion may include documents which are part of the Record on Appeal when the Record on Appeal has not yet been filed. See Rule 240(c)(3), SCACR.

"Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. "Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010).

In this case, the ALC dismissed Appellant's appeal from a decision of the Appellate Panel of the South Carolina Department of Employment and Workforce. Ex. 3, Order of Dismissal. The ALC included two grounds for dismissing Appellant's appeal—her failure to timely file her appellate brief *and* the insufficiency of her appellate brief based on the conclusory arguments therein. See Ex. 3, p.2 ("Appellant received the Record on Appeal and thereafter failed to comply with the rules or the specific notice of the appellate timeframes set forth in the

¹ Appellant served her initial brief with her notice of appeal; however, she failed to file any contemporaneous designation of matter under Rule 209(a), SCACR. This failure also warrants dismissal of Appellant's appeal. See Rule 260(a), SCACR (requiring the Clerk to issue an order of dismissal when an appellant fails to comply with the SCACR).

Court's order."); Ex. 3, p.3 ("The Court recognizes that Appellant is *pro se*, but by failing to cite any legal authorities to support her arguments, Appellant has abandoned any issues to which those arguments may have given rise.").

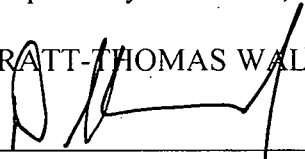
Appellant's initial brief filed with this Court, attached hereto and incorporated herein by reference as Exhibit 4, challenges the ALC's decision to dismiss her appeal for her failure to timely file an appellate brief. On the other hand, nothing in Appellant's initial brief challenges or even mentions the ALC's dismissal based on the insufficiency of her appellate brief. Consequently, this unappealed ground is the law of the case, warranting affirmance under the "two-issue" rule and Rule 220(c), SCACR.

Conclusion

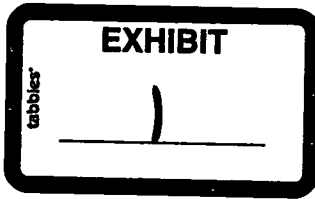
Appellant failed to timely appeal the decision of the ALC by serving the ALC with her notice of appeal. Pursuant to Rule 203(d)(3), SCACR, her appeal should therefore be dismissed. In the alternative, Appellant failed to appeal all grounds supporting the ALC's Order of Dismissal. Consequently, the ALC's decision should be affirmed pursuant to the "two-issue" rule and Rule 220(c), SCACR.

Respectfully Submitted,

PRATT-THOMAS WALKER, PA


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Attorneys for Respondent Darby Realty
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July 23, 2013
Charleston, South Carolina



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 13-ALJ-22-0095-AP

Tanya A. Vaughan-Youmans Appellant,

v.

Respondent.

South Carolina Department of
Employment and Workforce
and Darby Realty Company,
Inc.,

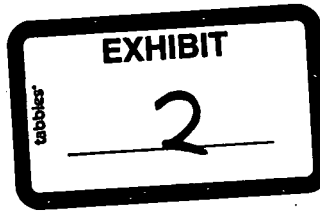
NOTICE OF APPEAL

Tanya A. Vaughan-Youmans appeals the decision of the Honorable Ralph K. Anderson III dated June 18, 2013. Appellant received a copy of this decision on June 19, 2013.
July 17, 2013

E.B. "Trey" McLeod, Esquire
Legal Department-Dept. of
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Attorney for Employer

make a
copy of
your proof
of service
&
motion.



JUL 18 2013

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 13-ALJ-22-0095-AP

Tanya A. Vaughan-Youmans Appellant,
v.
Respondent.

South Carolina Department of
Employment and Workforce
and Darby Realty Company,
Inc.,

PROOF OF SERVICE

I hereby certify that I am the Appellant, in the above-captioned matter and that on the 18th of JULY, 2013, in Summerville, South Carolina, I served a copy of the foregoing Notice of Appeal on the following parties by depositing the same in the United States Mail, postage, paid, and addressed as follows:

And including with this filing is the MOTION TO PROCEED IN FORMA PAUPERIS

Pratt-Thomas/Walker
Attorneys At Law
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John P. Linton, Jr.
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Charleston, SC 29403

Office of General Counsel for the SC
Department of Employment and Workforce
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Tanya A. Vaughan-Youmans
Tanya Vaughan-Youmans



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tanya A. Vaughan-Youmans,)	Docket No. 13-ALJ-22-0095-AP
)	
Appellant,)	
)	
v.)	ORDER OF DISMISSAL
)	
State of South Carolina Department of)	
Employment and Workforce and Darby)	
Realty Company, Inc.,)	
)	
Respondents.)	
)	

This matter is before the Administrative Law Court (ALC or Court) pursuant to an appeal filed by Tanya A. Vaughan-Youmans (Appellant). Appellant filed a Notice of Appeal on February 28, 2013. On March 15, 2013, the Court served the parties with an Order of Procedure setting forth filing deadlines. The Record on Appeal was filed April 4, 2013. The Order of Procedure required the Appellant to file her brief within twenty (20) days after the filing of the Record on Appeal. Darby Realty Company, Inc. (Darby) filed a Motion to Dismiss (Motion) on May 3, 2013, arguing that Appellant failed to file a brief in accordance with the Rules of Procedure for the ALC. Appellant filed a response to the Motion on May 8, 2013, asserting that she had not received any information from the Court prior to receiving the Motion; that she did not receive the Record on Appeal until April 24, 2013; and that when she received the Record on Appeal, it was damaged. Appellant also filed her brief on May 8, 2013. Darby filed its brief on May 28, 2013. On June 3, 2013, The South Carolina Department of Employment and Workforce (DEW) filed a Motion to Dismiss on two grounds: (1) Appellant failed to assert any statement of issue or error in the appeal and (2) Appellant failed to assert any statement of issues or citation of authority in her purported "brief." As of the date of this Order, Appellant has not responded to DEW's Motion to Dismiss.

DISCUSSION

Filing of Brief

Appellant asserts in her response to the Motion that she has not received any information from the Court in this case and therefore did not have a docket number in order to file

FILED

June 18, 2013

SC ADMIN. LAW COURT

documents. The Clerk of Court for the ALC mailed the Notice of Assignment (Notice) to the parties on March 14, 2013. This Notice was returned to the ALC by the United States Postal Service. In addition, the Court sent the Order of Procedure to the parties on March 15, 2013. This Order was sent to the Appellant at the address she provided: 218 Reagan Drive, Summerville, South Carolina 29483.¹ This document, like the Notice, has not been returned to the ALC by the United States Postal Service. Because the documents mailed by the Court have not been returned by the Postal Service, there is the presumption that the addressee received the mail in due course. *Calder v. Commercial Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864 (1936). *see also Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 395 S.E.2d 440 (1990).

Additionally, Appellant attached a copy of the envelope containing the Record on Appeal to her response. The envelope is properly addressed, has sufficient postage, and shows a mailing date of April 4, 2013. Although there is an indication from the Postal Service that the envelope was damaged, there is nothing to indicate it was not delivered in a timely fashion other than Appellant's assertion that she did not receive it timely.

Rule 37 of the South Carolina Administrative Law Court Rules (SCALCR) provides that “[i]n appeals from the Department of Employment and Workforce, the appellant shall file its brief with the Court within twenty (20) days after the Record on Appeal is filed.” Rule 38, SCALC further provides that the Court may dismiss an appeal for failure of a party to comply with any of the rules of appellate procedure or an Order of the Court.

Here, the Record on Appeal was filed on April 4, 2013. Appellant received the Record on Appeal and thereafter failed to comply with the rules or the specific notice of the appellate timeframes set forth in the Court's order.²

Sufficiency of Brief

Even if the Court considers Appellant's brief, her brief merely reargues the facts of the case, questioning certain aspects of the Appellate Panel's decision affirming the finding that Appellant was discharged for misconduct connected with his employment but failing to support these questions with legal authority. Rule 37(B)(3), SCALCR requires each appellate brief to be

¹ The court file has a copy of the envelope addressed to Appellant and showing correct postage attached to the Certificate of Service.

² The notes to Rule 38 also state that a litigant representing himself is responsible for complying with the Court rules.

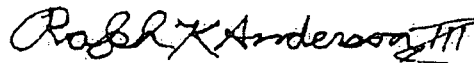
“divided into as many parts as there are issues to be argued, and each part shall bear an appropriate caption, followed by a discussion and citation of authority.”³ Appellant’s brief contains no clear presentation of any legal issues. But even if the Court were to construe Appellant’s arguments as giving rise to and discussing a legal issue, she has cited no legal authority to support them but has merely reargued her version of the facts. The Court recognizes that Appellant is *pro se*, but by failing to cite any legal authorities to support her arguments, Appellant has abandoned any issues to which those arguments may have given rise. See *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for his assertion); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”); *State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (issues raised by appellant were deemed abandoned because the arguments on those issues were conclusory).

Pursuant to Rule 38, SCALCR, an administrative law judge may dismiss an appeal for failure to comply with the rules of procedure for appeals or an order of the court. Because Appellant’s brief contains no clear legal issues and the written statements filed with this Court present no legal authority suggesting error on the part of DEW, this matter should be dismissed.

ORDER

IT IS THEREFORE ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.



Ralph K. Anderson, III
Chief Administrative Law Judge

June 18, 2013
Columbia, South Carolina

³ Rule 37(B)(3), SCALCR is based on Rule 208(b)(1)(D), SCACR.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

June 18, 2013
Columbia, South Carolina



PER CURIUM I, Tanya A. Vaughan-Youmans a *pro se* Appellant, respectfully submit the **Motion To Appeal** on the decision given on **June 18, 2013** an **Order of Dismissal** made by the Administrative Law Court signed by Ralph K. Anderson, III, Chief Administrative Law Judge. The docket number issued is **13-ALJ-22-0095-AP**.

BACKGROUND

(1.) I would like the decision of the Administrative Law Court (or ALC) to be reviewed and reversed base on the following grounds and supporting evidence: (a) On **February 28, 2013**, I filed a Notice to Appeal. The next correspondence that I received was on **March 5, 2013** by the ALC which was a memorandum, stating that a certificate of service needed to be complete to all parties (which is in compliance with ALC Rule 33). In return, I sent a **Certificate of Service** to all parties involved. That was the last communication that I received from the ALC.

(b) In **April, the week of the 24th**, I received the SCDEW transcript listed as the **Record On Appeal** with the ALC. I noted the mail was **dated as April 4, 2013** (which is twenty days later from the original mailing date) and it also included a docket number. That docket number being **13-ALJ-22-0095-AP**. *This is the first time that I became aware that I had a docket number with the ALC.* Then I received a **Motion To Dismiss** one week later from Darby Realty's Attorney Office.

(c) Based on the **Order of Dismissal** stating that I did not comply with the **Notice of Assignment** that was mailed on **March 14, 2013** and the **Order of the Procedure** that was mailed on **March 15, 2013**, neither which I received and as the **Order Of Dismissal** states on page 2, line 2 it states "This Notice was returned to the ALC by the United

States Postal Service.”

(d) The concern for me is noted on the envelope that was received by me from my mailbox that the document packet (that included the **Record Of Appeal** transcripts) was received unsealed and in a damaged condition because the Post Office stamped the envelope that way. This along with several other vital pieces of personal mail has been an issue for the month of March either with the timely delivery or the misboxed delivery.

(e) On **May 7, 2013**, I received notification of a **Motion To Dismiss** from the respondents to the ALC. In return I filed a **Denial Of A Motion To Dismiss**, and I filed my **Appellant Brief** on **May 8, 2013** to the ALC base on my knowledge at hand with not having received the proper **Notice Of Assignment** and the **Order Of Procedure**. *(As referred to in Paragraph 1)*

(f) Submitted to the ALC as evidence to prove these unprecedented circumstances was a receipt of the purchase of **Post Office Box 1924 Goose Creek, SC 29445**. Due to this and the timeliness of other discrepancies with the mail starting in the month of March my husband opened up a more secured post office box on **April 1, 2013**, to avoid this problem. This was the time frame that the ALC reference in the **Order Of Dismissal** that they received back the **Notice Of Assignment** that was mailed out on **March 14, 2013** that I never received: nor did I received the **Order Of Procedure** that the Administrative Law Court stated that they mailed on **March 15, 2013**.

(2) As a *pro se* Appellant and not being familiar with the rules of court or the **Order Of Procedure**, I am completely relying on the communication from the

court in order to be compliant with any of the rules or regulations governing the court as I have proved with my March 5th submission of Certificate of Service, as well as initiating this Appeal within itself. However, I was not giving the opportunity to continue to cooperate with the courts being that I never received any correspondences from the ALC after March 5, 2013.

(3) In having submitted this evidence to the ALC and my request for a **Motion To Deny The Dismissal**, based on this evidence alone this would be a miscarriage of justice and a denial of my right to due process. With the ALC assertion and presumption that I received the March 14th and 15th Notifications from them, which would have given me the assigned Docket Number and Judge to submit my Appeal Brief to. This preponderance of evidence should not be ignored as it is the glue that binds my purpose of this Appeal.

STATEMENT OF STATURE

*Pfeiffer v. South Carolina Department of Employment and Workforce
South Carolina Administrative Law Court Decisions
May 17, 2013*

S.C. Code Ann. 1-23-380(5) the court may reverse or modify the decision [of an agency] if substantial rights of the appellant been prejudiced because the administrative findings, inferences, conclusions, or decisions are (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

CONCLUSION

It is with this submission that I respectfully requested that the South Carolina Court Of Appeals will reversed the decision of the ALC **Order Of Dismissal** and grant me the right to present my case.

Tanya A. Vaughan-Youmans

Tanya A. Vaughan-Youmans

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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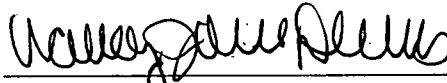
South Carolina Department of Employment and Workforce
and Darby Realty Company, Inc..... Respondents.

Proof of Service

I, Nancy Jane Dennis, an employee of Pratt-Thomas Walker, P.A., hereby certify that a true and correct copy of the Motion to Dismiss Appeal or, in the alternative, Affirm the Administrative Law Court's Decision Pursuant to Rule 220(c), SCACR, by Respondent Darby Realty Company, Inc. was served on this 23rd day of July, 2013, via U.S Mail, upon the following:

Tanya A. Vaughan-Youmans
Post Office Box 1924
Goose Creek, SC 29445
Appellant *Pro Se*

E.H. McLeod
Legal Department
Dept. of Employment & Workforce
Post Office Box 8597
Columbia, SC 29403
Attorney for Respondent S.C. Department
of Employment and Workforce



Nancy Jane Dennis
Legal Assistant