

STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 2013-001548

Tanya A. Vaughan-Youmans,

Appellant,

v.

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

Respondent.

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SC Court of Appeals

[INITIAL] APPEAL BRIEFING

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STATEMENT OF THE ISSUES ON APPEAL

1. DID THE ALC ERR IN ASSIGNING AN ORDER OF DISMISSAL DUE TO THE ERRONEOUS CIRCUMSTANCE THAT THE APPELLANT NOTIFIED THE ALC REGARDING MAIL COMPLICATION?
2. DID SCDEW ERR IN FINDING THAT THE APPELLANT WAS TERMINATED BASE ON MISCONSTRUE FACTS BASE ON ERRONEOUS CIRCUMSTANCES?
3. DID (DARBY REALTY) ERR IN TERMINATING APPELLANT AS A WHOLE AS ERRONEOUS?

STATEMENT OF THE CASE

- 1) The Appellant, Tanya Vaughan-Youmans, is appealing the decision of an **Order of Dismissal** made by the *Administrative Law Court (ALC)* that was signed **June 18, 2013** by Ralph K. Anderson, III, Chief Administrative Law Judge. In summary, this Order of Dismissal is based on *(a)* the timeliness of filing the Appellant's brief within twenty (20) days after the filing of the Record of Appeal, *(b)* failure to assert any statement of issue or error in the appeal and *(c)* failure to assert any statement of issues or citation of authority in her purported "brief". *(d)*The Appellant failed to file a brief in accordance with Rules of Procedure with the ALC. The Order of Dismissal points to the Appellant not complying with *Rule 37 and Rule 38*, of the (SCALCR) in appeals from *South Carolina Department of Workforce and Employment, (SCDEW)*.*(v)* As to the sufficiency of the brief under *Rule 37 (e)* the facts of the case as brought to the *ALC Court* by Appellant as being the basis of the appeal.

- 2) a) The Appellant challenged the decision made by *South Carolina Department of Workforce and Employment, (SCDEW)* by exercising the right to appeal the decision on **February 28, 2013** with the *Administrative Law Court*. This is in accordance to **S.C. Code 41-35-750** that states “*Within thirty days from the date of mailing of the commission's decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the commission's decision may secure judicial review of the decision by commencing an action in the court of common pleas, either in the county in which the employee resides or the county in which he was last employed, against the commission for the review of its decision, in which action every other party to the proceeding before the commission must be made a defendant.*”
- b) The Appellant appealed the decision of the Appeal Tribunal from *SCDEW* after they held up a decision based on the initial denial of benefits from **September 9, 2012 to January 5, 2013** that denied the appellant, seventeen (17) weeks of benefits that amount to Four Thousand One Hundred Sixty Five Dollars \$4,165.00. The Department disqualified the Appellant for inappropriate conduct and/or language with a customer.
- 3) a) The Appellant worked for *Darby Realty* from May 16, 2007 to September 5, 2012 (a total of five years). At the time of the Appellant’s termination, she served as an Assistant Property Manager for the apartment community known as Sawbranch. A week prior to the Appellant’s termination, the Appellant was

interviewed for a Property Manager position at the currently community that she served as Assistant Property Manager for the past five years.

- b) It was during the interview process that the Appellant made Victoria Cowart, Darby's Vice President of Property Management aware of the incident of the resident cursing at the Appellant prior to the appellant arriving to work fifteen minutes before her scheduled time. This was the first time that the Victoria Cowart was made aware of the incident. Yet, the Appellant report the incident to her direct supervisor, Lisa Shuey four weeks prior and the Appellant's direct supervisor did not find the Appellant at fault to even report the incident let alone write the Appellant up for the incident. This is *clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole.*" *S.C. Code Ann 1-23-380(5)*

ARGUMENT

I

Did the Administrative Law Court, (ALC) err in dismissing the case of the Appellant?

On **February 28, 2013**, the Appellant filed a Notice to Appeal with the ALC. The next correspondence that the Appellant 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 SCALC Rule 33). In return, the Appellant sent a **Certificate of Service** to all parties involved. That was the last communication that the Appellant received from the ALC.

The next and only correspondence that was received by the Appellant was in **April, the week of the 24th**, the Appellant received the SCDEW transcript listed as the **Record On Appeal** with the ALC. The Appellant 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. *This is the first time that the Appellant became aware that there was a docket number with the ALC.*

On **May 7, 2013**, (one week later) the Appellant received notification of a **Motion To Dismiss** from the respondents (Darby Realty's Attorney Office) to the ALC. In return the Appellant filed a **Denial Of A Motion To Dismiss**, and the Appellant filed her **Appellant Brief** on May 8, 2013 to the ALC base on her knowledge at hand with not having received the proper **Notice Of Assignment** and the **Order Of Procedure**. (*As referred to in Paragraph 1 of the Order of Dismissal*)

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 the Appellant's 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 the Appellant never received: nor did the Appellant received the **Order Of Procedure** that the Administrative Law Court stated that they mailed on **March 15, 2013**.

Based on the **Order of Dismissal** stating that the Appellant 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 the Appellant 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.” The discrepancy with the mail that the Appellant experienced was “*clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole.*” *S.C. Code Ann 1-23-380(5), Pfeiffer v. SCDEW. (May 2013)**

Submitted to the ALC as Substantial evidence” showed the envelope that was received by the Appellant from her mailbox (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.

Even until to this day, **July 17, 2013** the day before the Appellant filed her Notice of Appeal the Appellant received another piece of personal mail that was received **unsealed and in a damaged condition** that the Post Office stamped in the same above manner. Clearly, this substantiates that from the beginning of **March 2013 until July 17, 2013** the Appellant was still having complications with receiving personal mail at her home address at **218 Reagan Drive, Summerville, SC 29483**. The Appellant would like to submit further proof of evidence to this Court that illustrates further complication with the mail. It is with this evidence as well as statements submitted by the Appellant that is not with assertion and presumption as stated by the ALC in their Order of Dismissal, but by fact of evidence as submitted to ALC and now to this Court that the proof of erroneous circumstance is the basis of this appeal in this court, but due to know fault of the Appellant or to point no blame to the ALC we respectfully request that this court rule

in favor of the Appellant bas on “*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.* **S.C. Code Ann. 1-23-380(5)**

In addressing Rule 37 and Rule 38 with timeliness and sufficiency of brief ALL of which are pending receipt of rule from ALC in a timely manner to the *Pro se*’ Appellant. Due to this a wrong and unfair Decision of Dismissal has been arrived by the ALC. (Stating of the above Rule of **S.C. Code Ann. 1-23-380(5)**)

As a *pro se* Appellant and not being familiar with the rules of court or the **Order Of Procedure**, the Appellant completely relying on the communication from the court in order to be compliant with any of the rules or regulations governing the court as the Appellant have proved with her March 5th submission of Certificate of Service, as well as initiating this Appeal within itself. However, the Appellant was not giving the opportunity to continue to cooperate with the courts being that the Appellant never received any correspondences from the ALC after March 5, 2013. If the Appellant would have received the **Notice of Assignment** and the **Order of Procedure** clearly the Appellant would have comply with the rule.

ARGUMENT

2

Did South Carolina Department of Employment and Workforce, (SCDEW) err in disqualifying the Appellant?

On October 1, 2012 SCDEW disqualified the Appellant base upon **[INAPPROPRIATE CONDUCT AND/OR LANGUAGE WITH A CUSTOMER]** under **S.C. Code 41-35-120(2)(B)** that the Appellant was disqualified for seventeen (17) weeks. **R.p.77.** (As referred to in the **STATEMENT OF THE CASE in Section 2(b)**) SCDEW misunderstanding the facts as represented is clearly erroneous in circumstances because the Appellant did not act inappropriate in conduct and/or language as supported by Transcribed Testimony on **November 28, 2012** that appears in **Record of Appeal from SCDEW APPELLATE PANEL** of Victoria Cowart on **R.p.38:3-4** “*Miss Vaughan-Youmans told me, the client proceeded to “curse her”*”. As referred to in the **(STATEMENT OF THE CASE in Section 3(b))**

To further substantiate the erroneous claim the following is the testimony of the Hearing Officer, Lee Caulder and Lisa Shuey, the Appellant’s direct supervisor on **R.p.52:11-23** “**HEARING OFFICER {HO}** *How’d you ...how did you become aware of it{SITUATION WITH CLIENT}? EMPLOYER WITNESS-2 {EW2}{Lisa Shuey}*Miss. *Vaughan-Youmans told me about it first, so that she would tell me about it before the resident it, and the resident called minutes later. {HO}Okay, and so, what did you do? {EW2}*The resident was very, very upset. She mentioned that she would no longer want to do business with Miss Vaughan-Youmans. That anything that she had to direct to the office she would like to deal with me only. By the time I got off the phone with the resident she had calmed down and she was okay..... **{HO}**Okay. ...**{EW2}**..which is why I didn’t feel the need to tell Miss Cowart”

R.p.54:12-20 “**{HO}** okay, all right, prior to this timeprior to this particular incident had you ever had any other encounters with customers or...or residents that had

complaints about Miss Vaughan-Youmans? {EW2}Not any major complaints, no. Every{HO} Did I say major complaints? {EW2}No. There were probably a few. In property management you deal with so many different kinds of people that yes, there are going to be some people thator residents that, yes, probably get along with one person in the office better than the other.”

On **October 1, 2012** claims adjudicator found Appellant had been discharged for cause under **S.C. Code 41-35-120(2)(B)** that the Appellant was disqualified for seventeen (17) weeks; and reduced Appellant’s maximum benefits by seventeen (17) times her weekly benefit amount. **R.p.77.** The circumstance surrounding this incident was clearly erroneous. According to **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.* **Pfeiffer v. SCDEW.** (May 2013), **Waters v S.C. Land Res. Conservation Comm’n of S.C.,** 321 S.C. 219, 226, 467 S.E. 2d 913, 917 (1996).

ARGUMENT

3

Did (Darby Realty) err in terminating Appellant’s as a whole as erroneous?

The Appellant worked for **Darby Realty** from May 16, 2007 to September 5, 2012 (a total of five years).**R.p.36:11-14** “*At the time of the Appellant’s termination she served as an Assistant Property Manager for the apartment community known as Sawbranch.*” Lisa Shuey, “the Appellant’s direct supervisor” **R.p.51:17-18** In the five

years that the Appellant was employed with Darby Realty the Appellant never received any disciplinary actions while employed with the company. Submitted to this Court, respectfully as evidence sworn testimony of Lisa Shuey in **Transcribed Testimony R.p.52:1-4** “**{HO}** Okay, have you ever had to .. to give her any kind of warnings or counseling statements?**{EW2}** No, sir but like Victoria mentioned I’m not the one that does immediate disciplining”

To further substantiate the erroneous claim the following is Lisa Shuey testified to the Hearing Officer, Lee Caulder and Lisa Shuey, (the Appellant direct supervisor) “**EMPLOYER WITNESS-2 {EW2}**I think it was clear to everybody including Miss Vaughan-Youmans that the situation was handled, thatbut that it shouldn’t happen again. I think that was made very clear. **HEARING OFFICER {HO}**But you didn’t feel like it necessary to tell Miss Cowart about it? **{EW2}** I did not”. **R.p. 53:14-19**

This exchange further substantiates that this incident was not significant enough for the Lisa Shuey the direct supervisor of the Appellant to report the incident. In argument, this further proves the point that this situation was not significant enough to receive Disciplinary Action which contradicts the notion that this incident was the reason the Appellant was terminated. One could conclude that “*According to 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.* **Pfeiffer v. SCDEW.** (May 2013), **Waters v S.C. Land Res. Conservation Comm’n of S.C.,** 321 S.C. 219, 226, 467 S.E. 2d 913, 917 (1996).

CONCLUSION

I, the Appellant , Tanya Vaughan-Youmans, plea to the courts to award the seventeen (17) weeks of unemployment that has been denied; and respectfully requests the decision of the Administrative Law Court's **Order of Dismissal** be reversed and that the Court rule in favor of Appellant, according to *According to 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 and reward her the above request.

In summary all evidence submitted to this court along with all arguments contain in this brief the Appellant pleas with the court.

Respectfully submitted,

August 19, 2013

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- b) It was during the interview process that the Appellant made Victoria Cowart, Darby's Vice President of Property Management aware of the incident of the resident cursing at the Appellant prior to the appellant arriving to work fifteen minutes before her scheduled time. This was the first time that the Victoria Cowart was made aware of the incident. Yet, the Appellant report the incident to her direct supervisor, Lisa Shuey four weeks prior and the Appellant's direct supervisor did not find the Appellant at fault to even report the incident let alone write the Appellant up for the incident. This is *clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole.*" *S.C. Code Ann 1-23-380(5)*

ARGUMENT

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ARGUMENT

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Did South Carolina Department of Employment and Workforce, (SCDEW) err in disqualifying the Appellant?

On October 1, 2012 SCDEW disqualified the Appellant base upon **[INAPPROPRIATE CONDUCT AND/OR LANGUAGE WITH A CUSTOMER]** under **S.C. Code 41-35-120(2)(B)** that the Appellant was disqualified for seventeen (17) weeks. **R.p.77.** (As referred to in the **STATEMENT OF THE CASE in Section 2(b)**) SCDEW misunderstanding the facts as represented is clearly erroneous in circumstances because the Appellant did not act inappropriate in conduct and/or language as supported by Transcribed Testimony on **November 28, 2012** that appears in **Record of Appeal from SCDEW APPELLATE PANEL** of Victoria Cowart on **R.p.38:3-4** “*Miss Vaughan-Youmans told me, the client proceeded to “curse her”*. As referred to in the **(STATEMENT OF THE CASE in Section 3(b))**

To further substantiate the erroneous claim the following is the testimony of the Hearing Officer, Lee Caulder and Lisa Shuey, the Appellant’s direct supervisor on **R.p.52:11-23** “**HEARING OFFICER {HO}** How’d you ...how did you become aware of it{**SITUATION WITH CLIENT**}? **EMPLOYER WITNESS-2 {EW2}**{*Lisa Shuey*}*Miss. Vaughan-Youmans told me about it first, so that she would tell me about it before the resident it, and the resident called minutes later. {HO}Okay, and so, what did you do? {EW2}The resident was very, very upset. She mentioned that she would no longer want to do business with Miss Vaughan-Youmans. That anything that she had to direct to the office she would like to deal with me only. By the time I got off the phone with the resident she had calmed down and she was okay.... {HO}Okay. ...{EW2}..which is why I didn’t feel the need to tell Miss Cowart”*

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On **October 1, 2012** claims adjudicator found Appellant had been discharged for cause under **S.C. Code 41-35-120(2)(B)** that the Appellant was disqualified for seventeen (17) weeks; and reduced Appellant’s maximum benefits by seventeen (17) times her weekly benefit amount. **R.p.77.** The circumstance surrounding this incident was clearly erroneous. According to **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.* **Pfeiffer v. SCDEW.** (May 2013), **Waters v S.C. Land Res. Conservation Comm’n of S.C.,** 321 S.C. 219, 226, 467 S.E. 2d 913, 917 (1996).

ARGUMENT

3

Did (Darby Realty) err in terminating Appellant’s as a whole as erroneous?

The Appellant worked for *Darby Realty* from May 16, 2007 to September 5, 2012 (a total of five years).**R.p.36:11-14** “*At the time of the Appellant’s termination she served as an Assistant Property Manager for the apartment community known as Sawbranch.*” Lisa Shuey, “the Appellant’s direct supervisor” **R.p.51:17-18** In the five

years that the Appellant was employed with Darby Realty the Appellant never received any disciplinary actions while employed with the company. Submitted to this Court, respectfully as evidence sworn testimony of Lisa Shuey in **Transcribed Testimony R.p.52:1-4** “**{HO}** Okay, have you ever had to .. to give her any kind of warnings or counseling statements?**{EW2}** No, sir but like Victoria mentioned I’m not the one that does immediate disciplining”

To further substantiate the erroneous claim the following is Lisa Shuey testified to the Hearing Officer, Lee Caulder and Lisa Shuey, (the Appellant direct supervisor) “**EMPLOYER WITNESS-2 {EW2}**I think it was clear to everybody including Miss Vaughan-Youmans that the situation was handled, thatbut that it shouldn’t happen again. I think that was made very clear. **HEARING OFFICER {HO}**But you didn’t feel like it necessary to tell Miss Cowart about it? **{EW2}** I did not”. **R.p. 53:14-19**

This exchange further substantiates that this incident was not significant enough for the Lisa Shuey the direct supervisor of the Appellant to report the incident. In argument, this further proves the point that this situation was not significant enough to receive Disciplinary Action which contradicts the notion that this incident was the reason the Appellant was terminated. One could conclude that “*According to 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.* **Pfeiffer v. SCDEW.** (May 2013), **Waters v S.C. Land Res. Conservation Comm’n of S.C.,** 321 S.C. 219, 226, 467 S.E. 2d 913, 917 (1996).

CONCLUSION

I, the Appellant , Tanya Vaughan-Youmans, plea to the courts to award the seventeen (17) weeks of unemployment that has been denied; and respectfully requests the decision of the Administrative Law Court's **Order of Dismissal** be reversed and that the Court rule in favor of Appellant, according to *According to 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:*

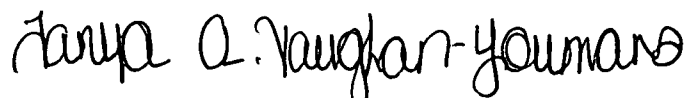
(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record and reward her the above request.

In summary all evidence submitted to this court along with all arguments contain in this brief the Appellant pleas with the court.

August 19, 2013

Respectfully submitted,



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STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson III, Administrative Law Judge

Case No. 2013-001548

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AUG 19 2013
SC Court of Appeals

Tanya A. Vaughan-Youmans, Appellant,

v.

Administrative Law Court, 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 19th of AUG, 2013, in Summerville, South Carolina, I served a copy of the foregoing INITIAL APPEAL BRIEF on the following parties by depositing the same in the United States Mail, postage, paid, and addressed as follows:

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