

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2024-001652

South Carolina Department of Consumer Affairs..... Respondent,

v.


Lavisha Green Appellant.

MOTION TO DISMISS APPEAL

The South Carolina Department of Consumer Affairs (“Department”), through undersigned counsel, hereby moves this Court to dismiss this appeal. The grounds for the motion are (1) this Court lacks jurisdiction to hear the appeal because Lavisha Green (“Ms. Green”) did not timely file and serve the Notice of Appeal as required by S.C. Code Ann. § 1-23-610 (Supp. 2023) and Rule 203(b)(6), SCACR; and (2) Ms. Green failed to file a motion for reconsideration with the Administrative Law Court as required by SCALC Rule 29(D)(4) prior to filing the Notice of Appeal with this Court. The facts and legal arguments supporting the motion are set forth in more detail in the accompanying Memorandum in Support of Respondent’s Motion to Dismiss Appeal.

(signature on the following page)

Respectfully Submitted,



Kelly H. Rainsford (Bar No. 15907)
James C. Copeland (Bar No. 100054)
Zachary A. Passmore (Bar No. 100203)
S.C. Department of Consumer Affairs
P.O. Box 5757 (zip: 29250-5757)
293 Greystone Blvd., Suite 400
Columbia, SC 29210
(803) 734-0375
krainsford@scconsumer.gov
jcopeland@scconsumer.gov
zpassmore@scconsumer.gov
Attorneys for Respondent

November 13, 2024

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2024-001652

South Carolina Department of Consumer Affairs..... Respondent,

v.

Lavisha Green Appellant.

MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS APPEAL

Respondent South Carolina Department of Consumer Affairs (“Department”) files this memorandum in support of its motion to dismiss this appeal. Appellant Lavisha Green (“Ms. Green”) filed a Notice of Appeal with this Court fifty-four (54) days after receipt of the final decision of the Administrative Law Court. Ms. Green also failed to file a Motion for Reconsideration of the Administrative Law Court decision prior to filing the Notice of Appeal with this Court. For these reasons, the Court should dismiss Ms. Green’s appeal.

Facts and Procedural Background

In August 2023, Ms. Green filed a Request for Contested Case Hearing Form at the South Carolina Administrative Law Court (“ALC”) requesting a hearing regarding the Department’s

assessment of a mortgage log penalty.¹ On the form, Ms. Green provided a mailing address and email address as follows:

Mailing Address: 3255 Landmark Drive Ste. 204	City: North Charleston	State and Zip: SC 29418
Home Number:	Work Number: 843-312-7272	Cell Number:
		*E-Mail Address: lgreen@fabsevenllcbrokerage.com
*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission		

(Exhibit B). Notably, the email address section referred to a sentence on the subsequent line stating, “By providing your e-mail address, you consent to receive court orders and notices via electronic transmission.” (Exhibit B). Ms. Green used this email address several times during the pendency of the contested case to communicate with the ALC and the Department regarding the Prehearing Statement, the admission of certain evidence, and exhibits Ms. Green submitted to the court.

On August 2, 2024, the administrative law judge issued a final order and decision, which his clerk emailed to Ms. Green and the Department on that same day. (Exhibit C). On August 28, Ms. Green replied to the August 2 email stating she received the email the previous day and did not receive a mailed copy of the decision. (Exhibit D). The administrative law judge’s clerk responded that she had mailed a hard copy to the address that matched the mailing address provided by Ms. Green on the Request for Contested Case Hearing Form. (Exhibits B, D).

On September 6, 2024, Ms. Green served upon the ALC and the Department a Motion of Continuance.² (Exhibit E). On September 25, fifty-four days after the court emailed the order to

¹ The Department assessed a fine against Ms. Green’s limited liability company, Fab Seven LLC, which was the mortgage broker licensee. See S.C. Code Ann. § 40-58-65(a) (“The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions”). However, she requested a contested case hearing regarding the Department’s decision in her individual capacity.

² The Department never received an acknowledgment of receipt of Ms. Green’s Motion for Continuance from the Court and is basing the filing date upon the dated provided in Ms. Green’s cover letter to the motion.

the parties, Ms. Green filed a Notice of Appeal with this Court, stating she received the ALC Order on August 27, 2024, via email. (Exhibit A). Ms. Green did not file or serve a motion for reconsideration with the ALC at any time prior to filing the Notice of Appeal with this Court.

I. The Appeal Must Be Dismissed Because the Notice of Appeal Was Not Timely Filed

Ms. Green did not file a Notice of Appeal with this Court until September 25, 2024, fifty-four days after the administrative law judge's clerk emailed and mailed the ALC decision to the addresses Ms. Green had provided. (Exhibits A, C). The appeal was not timely filed because Ms. Green filed the notice more than thirty days after receipt of the ALC's decision. S.C. Code Ann. § 1-23-610 (Supp. 2024) and Rule 203(b)(6), SCACR, require that the notice of appeal be filed with this Court as well as served upon the opposing party and the ALC, all within not more than thirty days after the party receives the final decision of the administrative law judge. Section 1-23-610 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. Appeal in these matters is by right.

S.C. Code Ann. § 1-23-610(A)(1) (emphasis added). The Appellate Court Rules also provide that when a party appeals a decision of the ALC to the Court of Appeals, the notice of appeal shall be served on the agency, the ALC, and all parties of record “within thirty (30) days after receipt of the decision.” Rule 203(b)(6), SCACR.

The South Carolina Supreme Court and the Court of Appeals have long recognized that timely service of a notice of appeal is a non-waivable requirement and failure to timely serve divests the Court of jurisdiction resulting in dismissal of the appeal. See Canal Ins. Co. v. Caldwell,

338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) (citing First Carolina Nat'l Bank v. A & S Enterprises, Inc., 272 S.C. 339, 251 S.E.2d 762 (1979); Burnett v. South Carolina State Highway Dep't, 252 S.C. 568, 167 S.E.2d 571 (1969)); see also Rule 203(d)(3), SCACR (“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).

The timeframe to serve a notice of appeal from the ALC decision begins when the appellant receives the actual decision. Thus, the question is when did Ms. Green receive the ALC decision? Ms. Green states in her Notice of Appeal that she received the ALC decision on August 27, 2024, via email. (Exhibit A). However, it is clear the ALC’s email serving both parties with a copy of the final order was sent on August 2, 2024. (Exhibit C). Counsel for the Department received the email on August 2, 2024. Ms. Green responded to the August 2 email on August 28 indicating she received the email the previous day. In that email, Ms. Green stated she did not receive the court’s email until August 27. However, she provides nothing to support any reason why it took her email provider twenty-five days to deliver the email sent by the ALC on August 2, or why the Department would have received the email on the same day but she would not have. The Supreme Court has clarified that “‘receipt’ under Rule 203, SCACR is not synonymous with the requirements of service.” Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 422 S.C. 211, 219, 810 S.E.2d 856, 860 (2018). The Court also made clear that Rule 203(b)(6), SCACR, does not mean that “receipt of the decision” requires receipt by mail or hand delivery in order to trigger the time to appeal. Id. In Wells Fargo, the Court held that an email, if sent from the court, an attorney of record, or a party, triggers the time to serve a notice of appeal. Id. at 217, 810 S.E.2d at 859. Here, the ALC sent the final decision to the parties via email on August 2, 2024, which triggered the time for Ms. Green

to serve the notice of appeal.³ See SCALC Rule 5 (“A party who furnishes an e-mail address to the Court consents to the service of documents issued by the Court via e-mail, and the date of the e-mail is the date of service.”).

Further, this Court has grappled with cases where litigants have maintained that the timestamp on the email message is not always the starting point because the timestamp does not conclusively determine the date a party actually received the email. See Lemmons v. Maced. Water Works, Inc., 431 S.C. 186, 847 S.E.2d 471 (Ct. App. 2020). Here, Ms. Green asserts she did not receive the court’s email with the final decision until August 27, 2024. The Uniform Electronic Transactions Act, however, provides “Unless otherwise agreed between a sender and the recipient, an electronic record is received when it: (1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent from which the recipient is able to retrieve the electronic record; and (2) is in a form capable of being processed by that system.” S.C. Code Ann. § 26-6-150(B).

In this case, Ms. Green provided the ALC with the email address used and the order was in a PDF format which is easily read by most devices in use today. Moreover, Ms. Green was able to open the email and view the decision as evidenced by her August 28 email acknowledging receipt of the decision. (Exhibit D). The ALC emailed the decision to the parties on August 2. Thus, Ms. Green received the decision via email on August 2, even if she was not aware she had received it until August 27. See S.C. Code Ann. § 26-6-150(E) (“An electronic record is received pursuant to subsection (B) even if an individual is not aware of its receipt”). As such, this appeal should be

³ In addition to the court emailing the final decision to the parties on August 2, the administrative law judge’s clerk also mailed Ms. Green a copy of the order to the address provided as indicated by Exhibit D. SCALC Rule 5 provides, “Service is deemed complete upon mailing. Service that complies with Rule 5(b)(1), SCRCP, also shall satisfy this Rule.” Rule 5(b)(1), SCRCP, also provides, “Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.”

dismissed because Ms. Green did not file the Notice of Appeal until September 25, 2024, fifty-four days after the parties received the ALC's final decision ALC.

II. The Appeal Should Be Dismissed Because Appellant Failed to File a Mandatory Motion for Reconsideration.

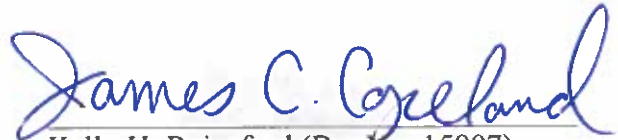
Effective April 8, 2024, Rule 29, which applies to contested case hearings at the ALC, provides “prior to filing a notice of appeal from the [ALC] decision, a party **must** file a motion for reconsideration.” SCALC Rule 29(D)(4) (2024) (emphasis added). Since 2019, the Revised Notes to SCALC Rule 29 have explained, “[i]n accordance with applicable case law on issue preservation, the last sentence of subsection (D), which stated a motion for reconsideration is not a prerequisite to filing a notice of appeal, has been deleted.” Thus, in order to preserve an issue for review by this Court, an appellant must have raised that issue in a timely motion for reconsideration as contemplated by SCALC Rule 29.

Here, Ms. Green did not file a motion for reconsideration at the ALC. By failing to file a motion for reconsideration, Ms. Green has not preserved any issues for this Court to review on appeal in this matter. See S.C. Dep’t of Motor Vehicles v. Dover, 423 S.C. 153, 160 n3, 813 S.E.2d 532, 535 n3 (Ct. App. 2018) (citing Risher v. S.C. Dep’t of Health & Env’tl. Control, 293 S.C. 198, 208, 712 S.E.2d 428, 422 (2011) (appellant’s failure to file motion for reconsideration or motion to alter or amend pursuant to SCALC Rules 29 or 68 (or Rules 59(e) or 60, SCRCP) renders issues unpreserved for appellate review)).

Conclusion

The Department's motion to dismiss this appeal should be granted based on the following reasons:

1. This Court lacks jurisdiction to hear this appeal. The Notice of Appeal was not timely filed and served upon the ALC or the Department, nor has Ms. Green put forth any evidence to rebut the presumption that she received the email serving her with the Final Order on August 2, 2024, when the court emailed her.
2. Even if this Court has jurisdiction to hear the appeal, the motion to dismiss should be granted because Ms. Green did not file the mandatory motion for reconsideration that is a prerequisite for an appeal and, therefore, has failed to preserve any issues for review by this Court.



Kelly H. Rainsford (Bar No. 15907)
James C. Copeland (Bar No. 100054)
Zachary A. Passmore (Bar No. 100203)
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(803) 734-0375
jcopeland@scconsumer.gov
zpassmore@scconsumer.gov
Attorneys for Respondent

Date: November 13, 2024

EXHIBIT A

RECEIVED

Sep 25 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 23-ALJ-30-0335-CC

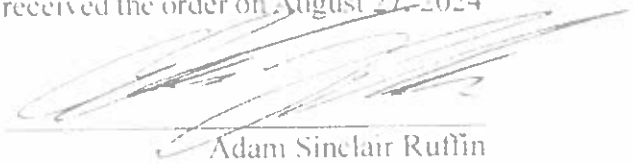
South Carolina Department of Consumer Affairs, Respondent.

v.

Lavisha Green, Appellant

NOTICE OF APPEAL.

Lavisha Green appeals from the final order and decision of the Honorable S. Phillip Lenski, Administrative Law Judge, dated August 2, 2024. Appellant received the order on August 27, 2024 via email. The final order under appeal is attached.



Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Lavisha Green

Other Counsel of Record

South Carolina Department of Consumer Affairs

Zachary A. Passmore, Esq.
James C. Copeland, Esq.
293 Greystone Blvd.
Columbia, SC 29250
(803) 734-0349

Attorneys for Respondent

RECEIVED

Sep 25 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

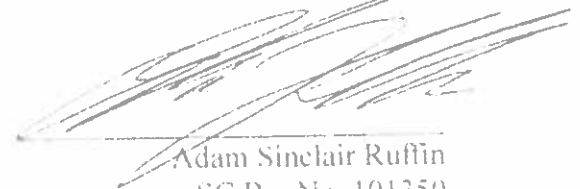
Case No. 23-ALJ-30-0335-CC

South Carolina Department of Consumer Affairs, Respondent.

Lavisha Green, Appellant.

PROOF OF SERVICE

Pursuant to Rules 262(a)(3) and 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the notice of appeal in the above-referenced case has been served upon Zachary Passmore, James Copeland, and the Honorable S. Phillip Lenski at the primary e-mail address listed in the Attorney Information System (AIS) on September 25, 2024. Undersigned further certifies that a copy of the notice of appeal was served on the Administrative Law Court by depositing a copy in the mail addressed to 1205 Pendleton Street, Suite 224, Columbia, SC 29201 on September 25, 2024.



Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Lavisha Green

From: Adam Ruffin
To: zpassmore@scconsumer.gov; icopeland@scconsumer.gov; plenski@scalv.net
Subject: Department of Consumer Affairs v. Lavisha Green Notice of Appeal, 23-AJ-30-0335-CC
Date: Wednesday, September 25, 2024 12:42:23 PM
Attachments: Dept Consumer Affairs v. Green - NOA and POS.pdf
Final Order - Lavisha Green 23a0335 (1).pdf
Outlook-l0psstpv.png

Good afternoon,

Please find attached for service the notice of appeal and proof of service in the above-referenced case which will be filed in the Court of Appeals shortly.

Adam Ruffin
Ruffin Law Firm, LLC
<https://ruffinappeals.com>
adam@ruffinappeals.com
(803) 470-5629



EXHIBIT B

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Green, First: Lavisha, Middle: , Docket No. (To Be Completed by ALC):
Mailing Address: 3255 Landmark Drive Ste. 204, City: North Charleston, State and Zip: SC 29418
Home Number: , Work Number: 843-312-7272, Cell Number: , *E-Mail Address: lgreen@fabsevenllcbrokerage.com

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? [X] Yes [] No

Are you represented by an Attorney? [] Yes [] No

Name of Attorney:

Attorney Mailing Address:

City, State and Zip:

Attorney Work Number and Cell Number:

Attorney E-Mail Address:

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached? [X] Yes [] No

Date the decision was issued: 7/3/23

Date the decision was received: 8/3/23

Please provide a brief statement regarding why the hearing is being requested and the relief sought: I am requesting a hearing to negotiate my \$9000 Mortgage Call Log fine and pay a lesser amount.

Payment (applicable filing fee pursuant to ALC Rule 71) is being submitted today to the Administrative Law Court via [] Check [X] Money Order [] Cash via [X] U.S. Postal Service [] Hand-delivery

[X] Your Signature or Signature of Attorney

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Lavisha Green

Date: 8/3/2023

City: North Charleston State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Dept. of Consumer Affairs PO Box 5157, Columbia, SC 29250

Name and/or Agency Name

Address

City, State and Zip

Lavisha Green

8/3/23

[X] Your Signature or Signature of Attorney

Date

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.



Lavisha Green <realtorlavishagreen@gmail.com>

Requirement to Pay Statutory Fine for Failure to Submit Mortgage Log by March 31 Deadline

Passmore, Zachary <ZPassmore@scconsumer.gov>
To: "Realtorlavishagreen@gmail.com" <Realtorlavishagreen@gmail.com>

Mon, Jul 3, 2023 at 9:49 AM



South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

Boulevard Suite 400

P. O. BOX 5757

COLUMBIA, SC 29250-5757

PROTECTING CONSUMERS SINCE 1975

Carri Grube Lybarker

Administrator

Consumer Advocate

293
Greystone
Commissioners
David Campbell

Chair

Columbia

W. Fred
Pennington, Jr.

Vice Chair

Simpsonville

Mark Hammond

Secretary of State

Columbia

William Geddings

Florence

James E. Lewis

Myrtle Beach

Renee I. Madden

Columbia

Jack Pressly

Columbia

Lawrence D.
Sullivan

Summerville

June 30, 2023

Via Email and U.S. Mail

Lavisha Green

Fab Seven LLC

3255 Landmark Drive, Building 200 Suite 204

North Charleston, SC 29418

**RE: REQUIREMENT TO PAY STATUTORY FINE FOR FAILURE TO SUBMIT
MORTGAGE LOG BY MARCH 31 DEADLINE**

Dear Lavisha Green:

South Carolina Code of Laws Section 40-58-65(A) requires persons holding a Mortgage Broker license in South Carolina to submit a mortgage log by March thirty-first of each year. South Carolina Code of Laws Section 40-58-65(A) requires persons holding a Mortgage Broker license in South Carolina to pay a fine of \$100 per day the mortgage log is late.

The mortgage log is a separate requirement from the mortgage call report filed with the Nationwide Multistate Licensing System & Registry ("NMLS"), and the HMDA report that lenders file with the Consumer Financial Protection Bureau ("CFPB"). If no credit decision was made during 2022 by Fab Seven LLC on any South Carolina residential mortgage loan applications, Fab Seven LLC must submit a written attestation of "No Activity." This attestation is still subject to the daily fine as required by state law.

The Department has not received Fab Seven LLC's mortgage log as of the date of this letter. As a result, Fab Seven LLC has failed to comply with state law and an increasing late fee is accruing in the amount of \$100 per day since March 31, 2023. A jurisdictional requirement has been placed on your license on NMLS regarding the fine.

Fab Seven LLC must immediately file their mortgage log or attestation of no activity. To resolve this non-compliance, the Department will accept a non-negotiable fine of \$9,000.00 if paid within thirty (30) days of this letter. Otherwise, the Department will seek the full amount of the penalty, which would be \$100.00 multiplied by the number of days until the Department receives your report or attestation of no activity.

If the fine is not paid within thirty (30) days of this letter, an order suspending or revoking Fab Seven LLC's license for failure to pay the fine may be issued pursuant to S.C. Code Ann. § 40-58-80(A)(2)(i). Thereafter, Fab Seven LLC will not be able to conduct any further business in South Carolina until the fine is paid.

Please make payment of the fine by check to the following address:

By Private Carrier:

South Carolina Department of Consumer Affairs
ATTN: Zachary A. Passmore
293 Greystone Boulevard, Suite 400
Columbia, South Carolina 29210

By Regular Mail:

South Carolina Department of Consumer Affairs
ATTN: Zachary A. Passmore
P.O. Box 5757
Columbia, South Carolina 29250

NOTICE OF RIGHT TO A HEARING

The violations set forth in this letter establish that Fab Seven LLC failed to comply with the provisions of South Carolina Code of Laws Section 40-58-65(A). The issuance of this violations letter represents a final agency decision by the Department. You have the right to contest the Department's decision by requesting a contested case hearing with the South Carolina Administrative Law Court ("ALC"). The hearing is requested through the ALC, using its forms and rules of procedure. Contact the ALC Clerk of Court at 803-734-0550 or obtain the forms and rules from their website at www.scalc.net. The hearing must be requested within thirty (30) days of receipt of this letter. Pursuant to Rule 71 of the South Carolina Administrative Law Court Rules of Procedure, a filing fee of \$150 is required for requesting a contested case hearing payable to the Administrative Law Court.

At the same time that you submit your written request to the Administrative Law Court, you must serve a written copy of your request for a contested case hearing on each party, including, but not limited to, the Department. A copy of your request must be mailed to the Department at the following address:

By Private Carrier:

South Carolina Department of Consumer Affairs
 ATTN: Zachary A. Passmore
 293 Greystone Boulevard, Suite 400
 Columbia, South Carolina 29210

By Regular Mail:

South Carolina Department of Consumer Affairs
 ATTN: Zachary A. Passmore
 P.O. Box 5757
 Columbia, South Carolina 29250

Should you have any questions or need any further information, you may contact me at (803) 734-0349, or zpassmore@scconsumer.gov.

Regards,

S.C. DEPARTMENT OF CONSUMER AFFAIRS



Zachary A. Passmore

Enforcement Attorney

2 attachments

 image002.png
137K

 image004.emz
3K

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lavisha Green

Appellant/Petitioner,

vs.

SC Dept of Consumer Affairs

Respondent.

Docket No. -ALJ-

PROOF OF SERVICE

I hereby certify that I have served the Request for Contested Case Hearing (Description of the document) in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on August 3, 2023 (Month/Day/Year) to the below named parties at their address of record: For

Zachary A Passmore

Name

P.O. Box 5757

Address

Columbia, SC 29250

City/State/Zip

Name

Address

City/State/Zip

Name

Address

City/State/Zip

Name

Address

City/State/Zip

Lavisha Green

(Print Your Name)

Lavisha Green

(Your Signature)

3255 Landmark Dr.

(Street)

N. Charleston, SC 29418

(City, State, Zip Code)

EXHIBIT C

Passmore, Zachary

From: Erika S. Easler <eeasler@scalc.net>
Sent: Friday, August 2, 2024 11:04 AM
To: lgreen@fabsevenllcbrokerage.com; Passmore, Zachary; Copeland, James
Subject: [External] Final Order-SC Dept of Consumer Affairs v. Lavisha Green 23a0335
Attachments: Final Order - Lavisha Green 23a0335.pdf

Ms. Green/Gentlemen,

Good morning!

Please find attached the Final Order in the above referenced case.

Thank you.

V/R,

Erika S. Easler
Judicial Law Clerk to the Honorable S. Phillip Lenski
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

CONFIDENTIALITY NOTICE: This email (including any attachments) contains information from the South Carolina Administrative Law Court that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments. Please contact HelpDeskIT@scalc.net if you are unsure the email is legitimate.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Consumer
Affairs,

Petitioner.

vs.

Lavisha Green,

Respondent.

Docket No. 23-ALJ-30-0335-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner:

Zachary A. Passmore, Esq.
James C. Copeland, Esq.

For the Respondent:

Pro se

STATEMENT OF THE CASE

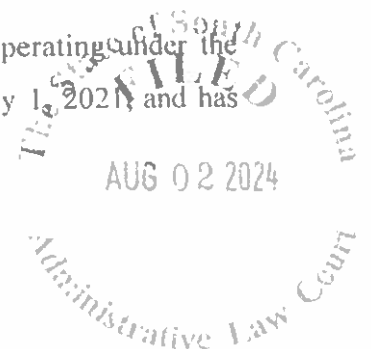
This case is before the Administrative Law Court (ALC or court) pursuant to a request for a contested case hearing filed by Lavisha Green (Respondent) on August 8, 2023. The Respondent challenges the determination of the South Carolina Department of Consumer Affairs (Department) that she failed to timely submit her mortgage log and its decision to impose a \$9,000.00 fine as a result. Generally, the Respondent does not dispute that she failed to timely file the mortgage log but maintains that it was an innocent mistake as a new broker and that the penalty imposed is excessive under the circumstances.

A hearing in this matter was held on November 14, 2023, at the ALC in Columbia, South Carolina. After careful consideration of the evidence presented, the applicable law, and the arguments of the parties, the court upholds the penalty imposed by the Department.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing in this matter, and considering the credibility and accuracy of the evidence, the court makes the following findings of fact by a preponderance of the evidence:

1. The Respondent has a mortgage broker license in South Carolina, operating under the entity Fab Seven, LLC. That entity was first issued its license on July 1, 2021, and has been continuously licensed since.



2. On January 23, 2023, the Department notified the Respondent via email at "realtorlavishagreen@gmail.com" informing her that she is required by law to file a mortgage log by March 31, 2023.
3. On February 15, 2023, the Department again notified the Respondent at the aforementioned email address that a mortgage log or a written attestation of "no activity" needed to be submitted by the March 31st deadline.
4. On March 14, 2023, the Department once again notified the Respondent via email that she was required to file a mortgage log by March 31st. This notice further provided that, pursuant to South Carolina law, a fine of \$100 per day would be imposed for late or incomplete submissions.
5. On April 6, 2023, the Department notified the Respondent that it had not received her mortgage log for 2022. The notice included a reminder regarding the \$100 per day late fee imposed for failing to timely file mortgage logs.
6. By email to the Respondent dated June 30, 2023, the Department notified the Petitioner that it did not receive her mortgage log by the March 31, 2023, deadline. The notice provided that the Department had imposed a statutory penalty of \$100 for each day the mortgage statement was late, resulting in a \$9,000.00 accrued fine as of the date of the notification. This email was sent to the same "realtorlavishagreen@gmail.com" email address used by the Department for its earlier correspondence to the Respondent regarding her mortgage log. The email also indicates that this notice was sent via U.S. mail as well.
7. By email dated July 5, 2023, the Respondent reached out to the Department seeking assistance regarding the penalty imposed. As part of this correspondence, the Respondent forwarded emails from 2022 between her and the Department expressing confusion over the mortgage log filing process. The email address used by the Respondent in the 2022 emails is the same email address used by the Department in their notices regarding her mortgage log submission for 2023.¹
8. Thereafter, on August 8, 2023, the Respondent filed a request for a contested case hearing with this court.
9. At the hearing, Karri Boyer Hawley testified on behalf of the Department. Ms. Hawley is a licensing attorney at the Department and assists license examiners with compliance issues

¹ It is unclear from the exhibit submitted which email the Respondent used to send the July 5, 2023, correspondence.

and application renewals. She testified to the requirements regarding the annual submission of a mortgage log and the training that mortgage broker licensees participate in regarding that requirement, among other things. Ms. Hawley testified that the Respondent was sent notices regarding the requirement in January, February, March, and April. She stated that the notices were sent to the email provided to the Department, and to the Multiple Listing Service (MLS), by Ms. Green and that she received no indication that the notices were undeliverable. Ms. Hawley noted that the Respondent timely submitted her 2021 mortgage log in 2022, which would have been the first year she was required to file a log following her licensure in 2021.

10. Ms. Green also testified at the hearing. She did not dispute that she failed to submit her mortgage log by the March 31st deadline, but noted that it was only her second year in business and that she was confused by the continuing education materials regarding the requirement. Ms. Green also testified that she changed her email since she filed the prior year, but acknowledged receiving the June 30, 2023, notice regarding the fine and conceded that she did not update her email in the MLS system. She argued that the fine was unreasonable, particularly given the fact that she was not notified of the fine until after ninety (90) days had passed and \$9,000.00 in penalties had accrued. Given that, she asked for the fine to be reduced.

CONCLUSIONS OF LAW

Based upon the above findings of fact, the court concludes the following as a matter of law:

1. Section 1-23-600 of the South Carolina Code grants jurisdiction to this court to hear contested cases under the Administrative Procedures Act. S.C. Code Ann. § 1-23-600 (Supp. 2023). Specifically, Section 40-58-90 grants the AIC the authority to hold contested case hearings in matters arising from the Department. S.C. Code Ann. § 40-58-90(A) (2011).
2. Unless otherwise required by law, the standard of proof in an administrative proceeding, such as this, is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2023); *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (citation omitted). A "preponderance of the evidence" is evidence which convinces as to its truth. *Frazier v. Frazier*, 228 S.C. 149, 168, 89 S.E.2d 225, 235 (1955).

3. In this state, the Department is charged with regulating mortgage broker licensees, and every person acting as a mortgage broker in South Carolina must be licensed by the Department. *See* S.C. Code Ann. § 40-58-30(A) (2011).
4. Licensed mortgage brokers must submit a mortgage log containing certain information to the Department by March 31st of each year. *See* S.C. Code Ann. § 40-58-65(A) (Supp. 2023); *see also* S.C. Code Ann. Regs. 28-400(D)(1) (Supp. 2023) (noting the requirement for mortgage brokers to file a mortgage log with the Department).
5. Pursuant to statute, “[t]he licensee *shall* pay a fine of one hundred dollars a day for late or incomplete data submissions.” S.C. Code Ann. § 40-58-65(A) (emphasis added). “Ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.” *S.C. Dep’t of Highways and Pub. Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) (citation omitted); *see also Collins v. Doe*, 352 S.C. 462, 470-71, 574 S.E.2d 739, 743 (“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.”) (citations omitted).

DISCUSSION

In this case, the Respondent does not dispute that she did not file her 2022 mortgage log by the March 31, 2023, deadline. Rather, she argues that she is a new licensee who was confused by or not fully aware of the filing requirements and made a mistake. The Respondent contends that the penalty is unreasonable and asks this court for leniency with respect to the amount imposed by the Department. Though the court is inclined to agree that the monetary penalty imposed in this case for a new licensee with no prior disciplinary infractions seems disproportionate to the Appellant’s conduct in this case, as set forth below, the court regrettably finds that it lacks discretion to reduce the penalty.

Pursuant to Section 40-58-65(A) of the South Carolina Code, licensees “*shall* pay a fine of one hundred dollars a day for late or incomplete data submissions.” S.C. Code Ann. § 40-58-65(A) (emphasis added). The statute does not provide for any lesser or alternative penalties, and the use of the word “shall” implies a mandatory requirement. *See S.C. Dep’t of Highways and Pub. Transp.*, 288 S.C. at 191, 341 S.E.2d at 135 (citation omitted); *Collins*, 352 S.C. at 470-71, 574 S.E.2d at 743. Thus, this court is without authority to alter the mandatory statutory penalty of one hundred dollars (\$100) a day for late submissions.

Here, the Respondent does not dispute that she failed to timely file her 2022 mortgage log and offers no explanation for this failure other than a lack of experience and some confusion regarding the filing requirements. While it is clear that the Respondent's omission in this case was due in large part to her inexperience, the court is without discretion to reduce or alter the penalty in any way given the statute's mandatory language. Consequently, the court is constrained to uphold the \$9,000.00 penalty imposed by the Department on the Respondent for her failure to timely file her 2022 mortgage log.

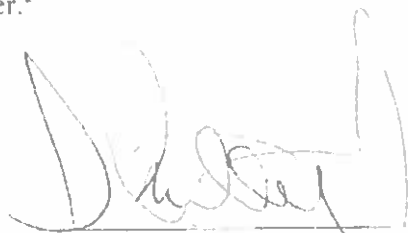
ORDER

Based upon the foregoing findings of fact and conclusions of law, the court finds that the Department's decision to impose a \$9,000.00 fine for the Respondent's failure to timely file her mortgage log must be upheld.

IT IS THEREFORE ORDERED that the Respondent shall pay the Department the penalty imposed in the amount of \$9,000.00, subject any payment plan, penalty modifications, or alternative arrangements the Department may offer.²

AND IT IS SO ORDERED.

August 2, 2024
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

² The court appreciates the candor of Ms. Green and is sympathetic to the financial difficulties resulting from the imposition of such a substantial fine. Following closing argument, the court asked counsel for the Department for its position on the penalty amount and whether leniency was allowed under the statute. The Department took the position that it was just enforcing the statute as written and had no authority to deviate from the one hundred dollar (\$100) per day penalty imposed by the statute. While the court's ability to offer leniency in this case is foreclosed by the mandatory statutory language regarding the penalty, the court rejects the idea that the Department—as the licensing authority in this matter—could not stipulate to a reduced number of days as part of settlement negotiations with the Respondent, suspend some portion of the penalty, or offer a long-term payment option to her. Given the facts of this case, the Respondent's neophyte status and her otherwise clean record, the court encourages the Department to work with the Respondent so as not to create an unsurmountable financial barrier to her returning to practice as a mortgage broker.

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

August 2, 2024
Columbia, South Carolina



EXHIBIT D

Passmore, Zachary

From: Erika S. Easler <eeasler@scalcn.net>
Sent: Wednesday, August 28, 2024 4:18 PM
To: L Green; Passmore, Zachary; Copeland, James
Subject: [External] RE: Final Order-SC Dept of Consumer Affairs v. Lavisha Green 23a0335

Ms. Green,

Good afternoon!

I mailed a hard copy to address that was provided to the court:

3255 Landmark Drive Suite 204
North Charleston, SC 29418

Thank you.

Erika

From: L Green <lgreen@fabsevenllcbrokerage.com>
Sent: Wednesday, August 28, 2024 3:55 PM
To: Erika S. Easler <eeasler@scalcn.net>; Passmore, Zachary <zpassmore@scconsumer.gov>; Copeland, James <JCopeland@scconsumer.gov>
Subject: Re: Final Order-SC Dept of Consumer Affairs v. Lavisha Green 23a0335

Hello,

I never received a copy in the mail, received this message yesterday. I am appealing the decision and hiring legal representation. Please send all communications directly through the mail to my home address:

154 Buchanan Cir
Goose Creek, SC 29445

Thank you,

From: Erika S. Easler <eeasler@scalcn.net>
Sent: Friday, August 2, 2024 11:04 AM
To: L Green <lgreen@fabsevenllcbrokerage.com>; Passmore, Zachary <zpassmore@scconsumer.gov>; Copeland, James <JCopeland@scconsumer.gov>
Subject: Final Order-SC Dept of Consumer Affairs v. Lavisha Green 23a0335

Ms. Green/Gentlemen,

Good morning!

Please find attached the Final Order in the above referenced case.

Thank you.

V/R,

Erika S. Easler

Judicial Law Clerk to the Honorable S. Phillip Lenski

South Carolina Administrative Law Court

1205 Pendleton Street, Suite 224

Columbia, S.C. 29201

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

. . CONFIDENTIALITY NOTICE:This email (including any attachments) contains information from the South Carolina Administrative Law Court that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments. Please contact HelpDeskIT@scalc.net if you are unsure the email is legitimate.

. . CONFIDENTIALITY NOTICE:This email (including any attachments) contains information from the South Carolina Administrative Law Court that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender

only" email and destroy all electronic and hard copies of the communication, including attachments. Please contact HelpDeskIT@scalco.net if you are unsure the email is legitimate.

EXHIBIT E

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SEP 11 2024

Lavisha Green
Appellant/Petitioner,
VS.
SC Department of Consumer Affairs
Respondent.

Docket No. 23-AJ-30-033F-CC

PROOF OF SERVICE

I hereby certify that I have served the Motion of Continuance
(Description of the document) in the above-captioned matter by depositing it in the
United State Mail, postage prepaid, on September 6, 2024 (Month/Day/Year) to the
below named parties at their address of record:

Zachary A. Passmore & James C. Copeland
Name
283 Greystone Blvd #400
Address
Columbia SC 29210
City State Zip

Enka S Easter
Name
1205 Pendleton St Ste 224
Address
Columbia SC 29201
City State Zip

Name
Address
City State Zip

Name
Address
City State Zip

Lavisha Green
(Print Your Name)

Lavisha Green
(Your Signature)

3236 Landmark Dr Ste 108
(Street)

North Charleston, SC 29418
(City, State, Zip Code)

Lavisha Green
3236 Landmark Dr. St. 108
North Charleston SC, 29418
843-312-7272
sevenmortgagelg@gmail.com

9/6/2024

State of SC Administrative Law Court
1205 Pendleton St. Ste. 224
Columbia, SC 29201

RE: Request for Continuance
Case Number: 23-AJ-30-0335-CC
Appellant: Lavisha Green
Respondent: SC Dept of Consumer Affairs

Dear Clerk of Court,

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), I am respectfully requesting a continuance of 30 days in the above-referenced appeal. Due to my limited familiarity with the legal process, I am in the process of securing legal counsel to properly represent me in this matter. However, I require additional time to finalize the hiring of an attorney.

I respectfully ask that the court grant this continuance to allow for proper legal representation and to ensure that my rights are adequately protected during the appeal process. I am making every effort to retain counsel promptly and anticipate completing this process within the requested extension period.

Thank you for your consideration of this request.

Sincerely,

Lavisha Green

Lavisha Green

RECEIVED

Nov 13 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Case No. 23-ALJ-30-0335-CC
Court of Appeals Case No. 2024-001652

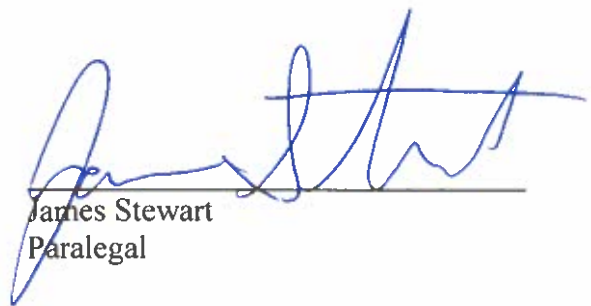
South Carolina Department of Consumer Affairs.....Appellant,
v.
Lavisha Green.....Respondent.

PROOF OF SERVICE

I, the undersigned employee of the South Carolina Department of Consumer Affairs, hereby certify that the Motion to Dismiss in the above-referenced matter was served on the following counsel of record via email at the addresses listed below:

Adam Sinclair Ruffin, Esquire
adam@ruffinappeals.com

Attorney for Appellant


James Stewart
Paralegal

November 13, 2024
Columbia, South Carolina

Stewart, James

From: Stewart, James
Sent: Wednesday, November 13, 2024 4:26 PM
To: adam@ruffinappeals.com
Cc: Rainsford, Kelly; Copeland, James; Passmore, Zachary
Subject: South Carolina Department of Consumer Affairs Vs. Lavisha Green Motion to Dismiss Appeal
Attachments: Dept. of Consumer Affairs v. Green Ltr filing Motion to Dismiss.pdf; Dept. of Consumer Affairs v. Green Motion to Dismiss Appeal - Signed.pdf; Dept. of Consumer Affairs v. Green Memorandum in Support of Respondent's Motion to Dismiss Appeal - Signed.pdf; Dept. of Consumer Affairs v. Green Exhibits A-E to Memo in Support.pdf; Dept. of Consumer Affairs v. Green Proof of Service - Signed.pdf; Dept. of Consumer Affairs v. Green Memorandum in Support of Respondent's Motion to Dismiss Appeal - Signed.pdf

Good afternoon Mr. Ruffin,

Please find attached and served upon you the Department's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss Appeal (with Exhibits) which will be filed with the South Carolina Court of Appeals shortly.

Best,

James Stewart | Paralegal

SC Department of Consumer Affairs
293 Greystone Boulevard | Suite 400 | Columbia, SC | 29210
PO Box 5757 | Columbia, SC | 29250-5757
[800.922.1594](tel:800.922.1594) | 803.734.0047 | [803.734.4060](tel:803.734.4060) (f)

If you have had positive experiences with the Department of Consumer Affairs, please share your story with the House Legislative Oversight Committee. For more information go to: <https://consumer.sc.gov/about-us/share-your-experience>.





South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
 293 GREYSTONE BOULEVARD, STE. 400
 P. O. BOX 5757
 COLUMBIA, SC 29250-5757

Commissioners
 David Campbell
 Chair
 Columbia
 W. Fred Pennington, Jr.
 Vice Chair
 Simpsonville
 Mark Hammond
 Secretary of State
 Columbia
 James E. Lewis
 Myrtle Beach
 Jack Pressly
 Columbia

Carri Grube Lybarker
 Administrator/
 Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

November 13, 2024

The Honorable Jenny Abbott Kitchings
 Clerk, South Carolina Court of Appeals
 P.O. Box 11629
 Columbia, South Carolina 29211

RE: South Carolina Department of Consumer Affairs v. Lavisha Green
 Appellate Case No. 2024-001652

Dear Ms. Kitchings:

Enclosed herewith for filing please find the Department’s Motion to Dismiss Appeal, Memorandum in Support of Respondent’s Motion to Dismiss Appeal with attached Exhibits A-E, and Proof of Service in the above-referenced matter. Pursuant to Rule 240(d), SCACR, it is the Department’s understanding that a filing fee is not required.

If you have any questions or require additional copies, please do not hesitate to call me at (803) 734-0375.

Respectfully,

James C. Copeland
 Chief Enforcement Attorney

CC: Adam S. Ruffin, Esquire (via email to adam@ruffinappeals.com)