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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Atlantic Coast Life Insurance Company)
and Southern Atlantic Re, Inc.)
)
 Petitioners,)
)
 v.)
)
 South Carolina Department of Insurance,)
)
 Respondent.)
_____)

Docket No. 24-ALJ-09-0427-CC¹

**ORDER DENYING MOTION
FOR RECONSIDERATION**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by the South Carolina Department of Insurance (Department) on February 24, 2025. This Court previously issued an Order on February 13, 2025, denying a Motion to Dismiss filed by the Department and permanently enjoining the Department, and all persons acting in concert with the Department, from enforcing or giving effect to the Director’s December 11th Order until such time as a final decision is issued by the Department. On March 4, 2025, Petitioners filed a Response to the Motion.²

For the reasons stated below, the Department’s Motion is denied.

DISCUSSION

South Carolina Administrative Law Court Rule 29(D) provides, in relevant part: “[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP.” Rule 59 of the Rules of Civil Procedure sets forth that a new trial on “all or part of the

¹ The Department’s Agency Information Sheet reflects that a final written decision has not be issued in this matter. Thus, although captioned as a contested case, this matter is injunctive in nature.

² Petitioners also filed a Motion to Seal requesting the Court seal its unredacted Response to the Department’s Motion and the Affidavit of Mark R. Gaylord along with exhibits attached. Petitioners assert that the documents should be sealed because of the confidential nature of the referenced proceedings. Importantly, Petitioners did not move this Court to consider these documents pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. As such, I decline to consider the Affidavit of Mark R. Gaylord or the exhibits attached to Petitioners Response to the Department’s Motion. Furthermore, there are far less drastic alternatives to sealing the entirety of Petitioners Response to ensure adequate protection of the confidential information contained therein. Mindful that this matter is still under investigation before the Department, paragraph 5 shall be redacted from Petitioners’ Response. See S.C. Code § 38-9-370 (Supp. 2024) (providing that hearings on an Adjusted RBC Report are confidential); see also S.C. Code Ann. § 38-9-380 (confidentiality of reports, plans, and orders of the Department).



issues” may be granted “in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State.” Relatedly, the South Carolina Supreme Court stated that “[i]n cases permitting an agency to reconsider its decision, courts have emphasized that an agency’s power to reconsider or rehear a case is not an arbitrary one, and such power should be exercised only when there is justification and good cause; i.e., newly discovered evidence, fraud, surprise, mistake, inadvertence or change in conditions: *Bennett v. City of Clemson*, 293 S.C. 64, 66-67, 358 S.E.2d 707, 708-09 (1987) (citing 2 Am.Jur.2d, Administrative Law, § 522 et seq. (1962 & Supp. 1986)).

In its Motion, the Department requests the Court alter or amend its order due to new circumstances and to prevent a “manifest injustice or correct an error of law.” At the outset, the Department has not argued that the Court misinterpreted and/or misunderstood section 38-9-360 of the South Carolina Code (Supp. 2024) or any other law set forth in its February 13, 2025 Order. As a result, the Court’s legal conclusion that section 38-9-360 of the South Carolina Code supported staying the Adjusted RBC Report (Report) during the pendency of Petitioners’ challenge to the Report is undisputed. Nevertheless, the Department request the Court “stay” it’s February 13th Order because new circumstances exist. Specifically, the Department states that on February 18, 2025, the Honorable Justice Kaye Hearn (Ret.), on behalf of the Director, conducted a confidential hearing regarding the Report. Based upon this “new evidence,” the Department requests the Court stay its February 13th Order until a ruling on the February 18, 2025 hearing is issued.³ However, the Department’s Motion fails to articulate a justifiable reason to warrant altering its decision. The Court’s Order clearly set forth that in the absence of a final decision regarding Petitioner’s challenge to the Adjusted RBC Report, the evidence before the Court did not support the occurrence of a Mandatory Control Level Event nor the Department’s imposition of supervision or the subsequent directive to cease writing new business is improper. *See* S.C. Code Ann. § 38-9-360(A)(2) (defining Mandatory Control Level Event). While a hearing may have since occurred, the Department has presented no evidence of a final disposition of Petitioners’ challenge to the Report. Indeed, Justice Hearn must still issue a report and recommendation to the Director and then, the Department must make a final decision on Petitioner’s challenge to the

³ Interestingly, at the time the parties submitted proposed orders on January 27, 2025, the hearing before Justice Hearn had not been scheduled.

Adjusted RBC Report.⁴ Thus, the purported “new evidence” fails to warrant issuance of a stay as nothing has changed since issuance of this Court’s February 13, 2025 Order. Moreover, the Department has not shown why the “new evidence” that was presented to Justice Hearn could not have been submitted at the hearing before this Court on January 15, 2025. Accordingly, there is no argument or evidence that the evidence the Department now request this Court consider is “new.”

The Department further argues that “[i]t is not proper for the Court to make conclusions relating to the credibility of Harvest’s valuation without any evidence on that point.” Additionally, the Department argues that the Court’s reliance on Mr. King’s testimony was improper under the South Carolina Rules of Evidence because he was not qualified to opine as to the Harvest Report nor was he proffered as an expert witness. Although Petitioners bear the ultimate burden of proof, the Department must still offer evidence to substantiate its positions and assertions—particularly where those positions and assertions are raised as a defense, and the party with the burden of proof established its positions and assertions. RANDOLPH R. LOWELL, *The Contested Case Before the ALC, in SOUTH CAROLINA ADMINISTRATIVE PRACTICE & PROCEDURE* 191, 192 (Randolph R. Lowell ed., 2013).; 29 Am. Jur. 2d *Evidence* § 168.

In this case, the Court evaluated the evidence that was presented to it. *See MRI at Belfair, LLC v. S.C. Dep’t of Health & Env’t Control*, 392 S.C. 314, 324, 709 S.E.2d 626, 631 (2011) (holding that “as the fact-finder, the ALC was free to make factual findings based on its view of the credibility and weight of the evidence”); *see also S.C. Dep’t of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 279, 731 S.E.2d 330, 337 (Ct. App. 2012) (“In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the de novo contested case proceeding.”). Mr. King’s testimony regarding the Harvest Report was based on his personal knowledge of the facts surrounding the issuance of the Report and his personal knowledge of Petitioners financial conditions. Importantly, the Department did not object to Mr. King’s testimony nor present any evidence or testimony to contradict the opinions offered by Mr. King.⁵ The Department did not present any legal reason or case law why the Court cannot consider

⁴ Notably, the Department has not presented evidence or testimony from the February 18, 2025 hearing to suggest that Justice Hearn will likely issue a recommendation favorable to the Department.

⁵ In fact, the Department only made one objection regarding a question that called for an expert testimony and Petitioner’s counsel subsequently withdrew and reworded that question. *See Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”).

testimony from a witness who is not an expert. “As a general rule testimony consisting of mere conclusions of the witness must be considered and given its due probative value, when admitted without objection. . . .” *Hanna v. Palmetto Homes, Inc.*, 300 S.C. 535, 536–37, 389 S.E.2d 164, 165 (Ct. App. 1990) quoting 88 C.J.S. *Trial* § 155 at 302 (1955), *Cantrell v. Carruth*, 250 S.C. 415, 421, 158 S.E.2d 208, 211 (1967) (testimony received without objection becomes competent and its sufficiency is for factfinder.). Furthermore, as the trier of fact, the Court may give testimony the weight it determines it deserves and, as stated in my February 13, 2025 Order, I found Mr. King’s testimony to be highly credible.⁶ *Florence Cnty. Dep’t of Soc. Servs. v. Ward*, 310 S.C. 69, 72-73, 425 S.E.2d 61, 63 (Ct. App. 1992).

Accordingly, the Department’s Motion is denied.

ORDER

IT IS THEREFORE ORDERED that the Petitioners’ Motion to Seal is **DENIED** and Petitioners’ Response to the Department’s Motion for Reconsideration is redacted consistent with the directives set forth herein.

IT IS FURTHER ORDERED that the Department’s Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 12, 2025
Columbia, South Carolina

⁶ Pointedly, the Department did not introduce **any** evidence at the hearing nor did it present witnesses to either support findings drawn in the Utah’s Department of Insurance’s Orders pertaining to the Harvest Report.

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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).



Stephanie Perez
Judicial Law Clerk

March 12, 2025
Columbia, South Carolina