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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. 24-ALJ-17-0391-IJ

Appellate Case No. 2025-001745

South Carolina Department of Revenue, Respondent,

v.

Market Hall, LLC d/b/a Soda City Market..... Appellant.

**SOUTH CAROLINA DEPARTMENT OF REVENUE’S MOTION TO DISMISS
APPEAL WITH PREJUDICE AND MEMORANDUM IN SUPPORT**

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Columbia, South Carolina
November 7, 2025

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2025-001745
Administrative Law Court Case No. 24-ALJ-17-0391-IJ

South Carolina Department of Revenue,Respondent,

v.

Market Hall, LLC, d/b/a Soda City Market,Appellant.

**MOTION TO DISMISS APPEAL WITH PREJUDICE
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue (Department) respectfully moves this Court to dismiss Appellant Market Hall, LLC, d/b/a Soda City Market’s (Appellant or Market Hall) appeal. As explained below, Appellant failed to comply with the procedural requirements for an appeal from the Administrative Law Court (ALC); this procedural defect in the appeal divests this Court of appellate jurisdiction and requires dismissal of the appeal.

ARGUMENT

On August 4, 2025, the ALC issued an Order Enforcing Summons (the “ALC’s Order”), which granted the Department’s petition seeking to compel Appellant to comply with an administrative summons the Department had issued to Appellant. *See* Order Enforcing Summons (Aug. 4, 2025), attached as Exhibit A. The ALC’s Order required Appellant to provide the information requested in the Summons within thirty (30) days of the date of that Order. *See* Order Enforcing

Summons at 16 (“Any further willful noncompliance will be grounds for a finding of contempt.”). Appellant filed its Notice of Appeal on August 29, 2025. On September 9, 2025, this Court entered an order remitting this matter to the ALC indicating that the ALC’s Order was not a final decision of the ALC. On September 13, 2025, Appellant filed its Petition for Rehearing arguing that the ALC’s Order is a final order, and this Court granted the relief sought in Appellant’s Petition for Rehearing and reinstated Appellant’s appeal by Order dated October 29, 2025.

The Rules of Procedure for the Administrative Law Court (SCALC) require a party to “file a motion for reconsideration prior to filing a notice of appeal and must state with particularity the points supposed to have been overlooked or misapprehended by the Court.” SCALC Rule 29 (emphasis added), attached as Exhibit B. The time for filing a motion for reconsideration is within ten (10) days after notice of the final decision. *Id.* Therefore, Appellant could not file a notice of appeal concerning the ALC’s Order unless it first filed a motion for reconsideration on or before August 18, 2025.

Appellant filed its Notice of Appeal on August 29, 2025. Critically, **Appellant never filed a motion for reconsideration** as required under SCALC Rule 29.

The Supreme Court has made clear that “the failure of a party to comply with procedural requirements for an appeal divests a court of appellate jurisdiction.” *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (citing *Great Games, Inc. v. S.C. Dep’t of Rev.*, 339 S.C. 79, 82 at n. 5, 529 S.E.2d 6, 7 at n. 5 (2000)). The Supreme Court reiterated that holding in *Allison v. W.L. Gore & Associates*, stating that compliance with rules, regulations, and statutes governing an appeal invoke questions of appellate jurisdiction. *Allison v. W.L. Gore & Associates*, 714 S.E.2d 547, 549, 394 S.C. 185, 188 (2011) (citing *In Re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 686 S.E.2d 683 (2009)).

SCALC Rule 29 plainly requires a party to file a motion for reconsideration before appealing the ALC's decision to this Court.¹ The ALC's rules "are not mere technicalities," and SCALC Rule 29 provides an orderly mechanism to guide appeals from the ALC. *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Consequently, because Appellate has failed to comply with the requirements of SCALC Rule 29, the Department respectfully submits this Court lacks appellate jurisdiction in this matter and respectfully requests the appeal be dismissed with prejudice.



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Attorneys for Respondent South Carolina Department of Revenue

Other Counsel of Record:

James Emerson Smith, Jr., Esquire
1422 Laurel Street
Columbia, SC 29201
Attorney for Market Hall

November 7, 2025

¹ The "Editors' Notes" to SCALC Rule 29 further explain: "In accordance with applicable case law on issue preservation, a motion for reconsideration is a prerequisite to filing a notice of appeal."

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South Carolina Department of Revenue, Respondent,

v.

Market Hall, LLC d/b/a Soda City Market..... Appellant.

PROOF OF SERVICE

I hereby certify that I have served the South Carolina Department of Revenue's Motion to Dismiss Appeal with Prejudice and Memorandum in Support by depositing a copy in the United States Mail, postage prepaid, as well as via electronic mail, on November 7, 2025, addressed to the Appellant's attorneys of record, at the addresses provided in the Attorney Information System as noted below:

James Emerson Smith, Jr., Esquire
1422 Laurel Street
Columbia, SC 29201
E-Mail: james@jamesmithpa.com



Amber N. Hogan
South Carolina Department of Revenue

Columbia, South Carolina
November 7, 2025

Amber Hogan

From: Amber Hogan
Sent: Friday, November 7, 2025 4:28 PM
To: James@JamesSmithPA.com
Cc: Thomas C. Hughes; Cyndal Sweet; Jason Luther
Subject: South Carolina Department of Revenue, Respondent vs. Market Hall, LLC d/b/a Soda City Market / Appellate Case No.: 2025-001745
Attachments: 2025.11.07 DOR's MTD & Memo in Opp.pdf

Mr. Smith,

I am attaching the South Carolina Department of Revenue's Motion to Dismiss Appeal with Prejudice and Memorandum in Support, which we intend to file with the Court of Appeals this afternoon. I will be sure to copy you on the transmittal to the Court.

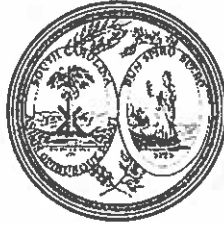
If you have any questions or need any further information from our office, please do not hesitate to give me a call.

Kindest regards,

Amber

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF GENERAL COUNSEL

Physical Address:
300A Outlet Pointe Blvd.
Columbia, SC 29210



OGC: 803.898.5130
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November 7, 2025

VIA ELECTRONIC MAIL – ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: South Carolina Department of Revenue, Respondent vs. Market Hall, LLC
d/b/a Soda City Market
Appellate Case No. 2025-001745

Dear Ms. Kitchings:

Enclosed for filing please find the South Carolina Department of Revenue's Motion to Dismiss Appeal with Prejudice and Memorandum in Support in the above-referenced matter. I am also enclosing a Proof of Service.

By copy of this letter, I am serving opposing counsel with a copy of same.

If you have any questions or need anything further from me, please do not hesitate to give me a call at the number above. If I am not available, you can reach my paralegal, Amber Hogan, at 803-898-5008 or Amber.Hogan@dor.sc.gov.

With my regards, I am

Sincerely,

Thomas Hughes by JPL

Thomas C. Hughes, Esquire

TCH/anh
Enclosure

cc: James Emerson Smith, Jr., Esquire (via e-mail @ james@jamesmithpa.com)