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Nov 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From the South Carolina Administrative Law Court

S. Phillip Lenski, Administrative Law Judge

Docket 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.

**APPELLANT'S RESPONSE TO RESPONDENT'S
MOTION TO DISMISS THE APPEAL**

Pursuant to Rule 240, SCACR, Market Hall, LLC, d/b/a Soda City Market ("Market Hall" or "Appellant"), by and through the undersigned counsel hereby submits this Response to the South Carolina Department of Revenue's ("Department" or "SCDOR") Motion to Dismiss Appeal. Rule 240, SCACR.

I. INTRODUCTION

The Department's Motion to Dismiss rests entirely on the argument that Market Hall was required to file a Motion for Reconsideration under SCALC Rule 29 before filing a Notice of

Appeal. That position is legally incorrect, inconsistent with the text of SCALC Rule 29, contradicted by governing statutes, and incompatible with binding Supreme Court authority. Moreover, the Department's Motion should be denied for two additional reasons: (1) the Department consented to a stay of the Administrative Law Court's ("ALC") Order pending appeal, and (2) the Department failed to oppose Market Hall's Petition for Rehearing, which this Court treated as a Motion to Reinstate the appeal and subsequently granted.

II. PROCEDURAL HISTORY

- a. On August 4, 2025, the ALC issued an Order Enforcing Summons, which granted the Department's petition seeking to compel Market Hall to comply with an administrative summons.
- b. Market Hall timely filed its Notice of Appeal on August 29, 2025.
- c. 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.
- d. On September 13, 2025, Market Hall filed its Petition for Rehearing arguing that the ALC's Order is a final order.
- e. On October 10, 2025, the ALC granted a Consent Motion to Stay Order Pending Appeal, which explicitly stated that "The Department consents to the Respondent's Motion to Stay."
- f. On October 29, 2025, this Court granted the relief sought in Market Hall's Petition for Rehearing and reinstated Market Hall's appeal.
- g. On November 7, 2025, the Department filed its Motion to Dismiss Appeal with Prejudice.

III. ARGUMENT

1. The Department's Motion to Dismiss Should Be Denied Because the Department Consented to a Stay of the ALC Order Pending Appeal

The Department's Motion to Dismiss should be denied because the Department previously consented to a stay of the ALC's Order pending appeal. On October 10, 2025, the ALC issued an Order Granting Consent Motion to Stay, which explicitly stated that "The Department consents to the Respondent's Motion to Stay." By consenting to a stay pending appeal, the Department acknowledged the validity of Market Hall's appeal and should be estopped from now arguing that the appeal should be dismissed.

The Department's current position that Market Hall's appeal should be dismissed for failure to file a motion for reconsideration is directly inconsistent with its previous position consenting to a stay pending appeal. The Department cannot have it both ways—it cannot consent to a stay pending appeal and then argue that no valid appeal exists. This type of inconsistent position-taking is precisely what the doctrine of judicial estoppel is designed to prevent.

2. The Department's Motion to Dismiss Should Be Denied Because the Department Failed to Oppose Market Hall's Petition for Rehearing

The Department's Motion to Dismiss should also be denied because the Department failed to oppose Market Hall's Petition for Rehearing, which this Court treated as a Motion to Reinstate the appeal. On September 13, 2025, Market Hall filed its Petition for Rehearing arguing that the ALC's Order is a final order. The Department had the opportunity to oppose this petition and argue that Market Hall failed to comply with SCALC Rule 29, but it did not do so. Instead, the Department remained silent, and this Court subsequently granted the petition and reinstated the appeal on October 29, 2025.

The Department's failure to raise its SCALC Rule 29 argument in response to Market Hall's Petition for Rehearing constitutes a waiver of that argument. The Department should not be permitted to remain silent when Market Hall sought reinstatement of its appeal and then, after reinstatement is granted, file a motion to dismiss based on an argument that could have been raised earlier.

3. SCALC Rule 29 Did Not Require Market Hall to File a Motion to Reconsider Before Appealing

a. SCALC Rule 29 is permissive, not mandatory

The Rule states a party "may" request reconsideration. It does not state that reconsideration is required for appellate jurisdiction.

b. Appeals from the ALC are governed by statute—not SCALC Rule 29

S.C. Code Ann. § 1-23-610(A) sets forth the requirements for appealing an ALC decision. The statute requires only (1) a final decision, and (2) compliance with the notice-of-appeal procedures. It contains no requirement that a party file a Rule 29 motion. The Department seeks to judicially insert a prerequisite not contained in statute. S.C. Code Ann. § 1-23-610.

c. Purely Legal Issues Require No Motion to Reconsider

South Carolina law is clear that a motion to reconsider is not required when the issues on appeal are purely legal and were ruled upon by the tribunal. When the issue on appeal is purely legal and was ruled on by the tribunal, a motion for reconsideration is NOT required for preservation. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 527 S.E.2d 742 (2000). The ALC's enforcement ruling involved purely legal questions; no further facts could be developed.

SCACL Rule 29 reconsideration is generally a prerequisite to issue preservation, it is not

a rigid jurisdictional condition where (a) the ALC's order conclusively resolved the summons-enforcement petition; (b) Market Hall timely noticed its appeal; and (c) this Court has already reinstated without any opposition from the Department. Indeed, the Department acknowledged the validity of this appeal when it consented to a stay of the ALJ Order pending this appeal. The purpose of Rule 29 is to allow the ALC to correct errors and to preserve issues and does not compel dismissal where the issues were fully presented below and no unfairness to the Department is shown.

4. Jurisdictional Issues Are Never Waived

Jurisdiction cannot be waived or forfeited. Preservation rules do not apply to jurisdictional questions. If the ALC had jurisdiction and the order is final, Market Hall had the right to appeal.

5. The Court Has Already Recognized the Validity of the Appeal

The Court granted rehearing, vacated remittitur, and reinstated the appeal on October 29, 2025. If jurisdiction were lacking, reinstatement would not have occurred.

IV. CONCLUSION

For these reasons, Appellant Market Hall, LLC, d/b/a Soda City Market respectfully requests that the Court deny the Department's Motion to Dismiss.

November 16, 2025.

Respectfully Submitted,

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Appellant.

PROOF OF SERVICE

The undersigned, Attorney for the Appellant, does hereby certify that service of the Appellant's Response to Respondent's Motion to Dismiss in the above-captioned matter was made upon all counsel of record by AIS registered email address this 16th day of November 2025.

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November 16, 2025

Via Email Only

Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
By Email: ctappfilings@sccourts.org

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Re: SC Department of Revenue v. Market Hall, LLC, d/b/a Soda City Market
Appellant's Response to Respondent's Motion to Dismiss
Appellate Case No.2025-001745

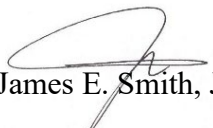
Dear Clerk Kitchings:

Please find attached Appellant's Response to Respondent's Motion to Dismiss and Proof of Service for filing with the South Carolina Court of Appeals. A copy of this letter with the same documents has been provided to the Respondent's counsel of record.

Please do not hesitate to let us know if you need anything further.

With kind regards, I remain,

Very truly yours,


James E. Smith, Jr.

cc via email: Jason P. Luther, Esq.
Thomas C. Hughes, Esq.

