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**Nov 21 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Case No. 24-ALJ-17-0391-IJ

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Appellate Case No. 2025-001745

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South Carolina Department of Revenue, ..... Respondent,

v.

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

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**RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENT'S  
MOTION TO DISMISS APPEAL WITH PREJUDICE AND MEMORANDUM IN  
SUPPORT**

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Columbia, South Carolina  
November 21, 2025

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

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Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue (Department) respectfully replies to Appellant Market Hall, LLC, d/b/a Soda City Market’s (Appellant or Market Hall) return to the Department’s Motion to Dismiss. As demonstrated below, each of Appellant’s objections to the Department’s Motion to Dismiss is without merit.

**ARGUMENT**

- 1. The Department’s consent to a stay of enforcement of the ALC Order and lack of response to Appellant’s Petition for Rehearing has no effect on the Department’s Motion to Dismiss.**

On September 9, 2025, this Court entered an order (Remittitur Order) indicating that the ALC Order was not a final order and remitted this case to the ALC. On September 13, 2025, Appellant filed its Petition for Rehearing arguing that the ALC Order is a final order. On October 10, 2025, the ALC granted Appellant’s Motion to Stay Order Pending Appeal; the Department consented to the

relief granted in that order (staying the ALC's Order Enforcing Summons until this Court had rendered a final decision). On October 29, 2025, this Court reinstated Appellant's appeal finding that the ALC Order is a final order. On November 7, 2025, the Department filed its motion to dismiss this matter with prejudice based primarily on the grounds that Appellant failed to comply with SCALC Rule 29(D), which requires a party to file a motion for reconsideration with the ALC before appealing a final order.

First, and as Appellant points out in its Return, matters of appellate jurisdiction are not subject to waiver. 4 C.J.S. Appeal and Error § 49. This Court has held that “[t]he right to appeal is a jurisdictional matter and, even if the parties do not raise the issue of appealability, we must dismiss the appeal on our own motion if we conclude we do not have jurisdiction.” *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) (quoting *Dorothy J. Pierce Family Mineral Trust v. Jorgenson*, 816 N.W.2d 779, 781 (N.D.2012) (internal quotation marks omitted)). Whether Appellant's noncompliance with SCALC Rule 29 operates to preclude Appellant's right to appeal is a jurisdictional matter. The Department cannot have waived the right to challenge this Court's appellate jurisdiction.

Second, even if the Department could waive its objection to appellate jurisdiction, the Department's consent to a stay of the ALC Order does not constitute such a waiver. A motion to reconsider may only be made in response to a final order. *See* SCALC Rule 29(D). At the time the Department consented to the stay, this Court had determined that the ALC Order was not a final order and remitted the case to the ALC. Thus, filing a motion to dismiss the appeal based on Appellant's failure to file a motion to reconsider would be nonsensical—such a motion would assume the ALC Order was a final order in direct contravention of this Court's decision in effect at the time. Shortly after this Court reinstated this appeal and determined that the ALC Order is a final order, the Department filed its Motion to Dismiss.

Third, pursuant to Rules 240 and 221(a), SCACR, a return to a petition for rehearing may be filed only if requested by the court. This Court never requested a return from the Department to Appellant's Petition for Rehearing.

**2. SCALC Rule 29 Requires Appellant to File a Motion to Reconsider before Filing a Notice of Appeal.**

Appellant focuses on the first sentence of SCALC Rule 29(D), which contains permissive language because a party is not required to file a motion for reconsideration and a notice of appeal when they lose at the ALC—such a party of course has the option to accept the ALC's order, comply, and refrain from moving for reconsideration or appealing. *See* SCALC Rule 29(D). However, SCALC Rule 29(D) is clear that a motion for reconsideration is a requirement and a prerequisite to filing a notice of appeal. "A party *must* 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(D) (emphasis added). The mandatory language of SCALC Rule 29 speaks for itself—Appellant could not appeal this case unless it first filed a motion for reconsideration.

In the alternative, Appellant argues that SCALC Rule 29 is superseded by S.C. Code Ann. § 1-23-610. This argument is misplaced for several reasons.

First, it is well-established that the General Assembly has the authority to regulate the right to appeal, including creating requirements that must be complied with in order to maintain an appeal. *Horn v. Blackwell*, 48 S.E.2d 322, 323, 212 S.C. 480, 483–84 (1948). The General Assembly also has the right to delegate to administrative agencies and bodies of the state a large measure of discretionary authority to make rules as to the enforcement of law, provided those rules do not conflict with the statute that conferred the authority. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 380 S.C. 349, 375, 669 S.E.2d 899, 912 (Ct. App. 2008) (citing cases). Here, the legislature specifically directed the ALC to promulgate rules governing the proceedings at the ALC, including those requirements that must be followed in order to perfect an appeal to the Court of Appeals. *See*

S.C. Code Ann. § 1-23-650. The ALC did so, and Rule 29 is presumptively valid. *See* S.C. Code Ann. § 1-23-650 (explaining process for promulgating rules for ALC); Const. art. V, § 4A (detailing how court rules should be submitted and approved by the legislature).

Second, SCALC Rule 29 and section 1-23-610 do not conflict, so there is no reason for this Court to engage in statutory construction to construe one requirement as superseding the other. Section 1-23-610 imposes general requirements for how and when to serve a notice of appeal in order to seek judicial review of a final decision of the ALC. Rule 29(D) simply adds a further requirement that the aggrieved party move for reconsideration of the final order before filing the notice of appeal. As Rule 29(D) makes clear, the 30-day timeline for filing an appeal (as provided in section 1-23-610) is stayed by a timely motion to reconsider. Thus, the requirements of section 1-23-610 and Rule 29(D) are harmonious—not conflicting. As such, there is no need for this Court to construe the statute as superseding the Rule.

Third, “[a]ll hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section.” S.C. Code Ann. § 1-23-650 (2014). Therefore, ALC proceedings are required by statute to be conducted according to the SCALC Rules including SCALC Rule 29 which requires the filing of a motion for reconsideration before filing a notice of appeal.

**3. This Court has not addressed the matters raised in the Department’s Motion to Dismiss.**

The Remittitur Order and Appellant’s Petition for Rehearing are specifically focused on whether the ALC Order is a final order and did not address Appellant’s failure to comply with SCALC Rule 29. This Court’s decision to reinstate Appellant’s appeal based on finality of the ALC Order is not a decision on whether Appellant’s failure to comply with SCALC Rule 29 has created a jurisdictional defect in Appellant’s appeal.

CONCLUSION

Appellant failed to comply with the plain language of SCALC Rule 29. The jurisdictional defect caused by Appellant's failure to comply with SCALC Rule 29 is not subject to waiver. As such, Appellant's appeal should be dismissed with prejudice.

*s/ Thomas C. Hughes*

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**PROOF OF SERVICE**

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I hereby certify that I have served the Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal with Prejudice and Memorandum in Support via electronic mail, on November 21, 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](mailto:james@jamesmithpa.com)

*Amber N. Hogan*

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Amber N. Hogan  
South Carolina Department of Revenue

Columbia, South Carolina  
November 21, 2025

## Amber Hogan

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**From:** Amber Hogan  
**Sent:** Friday, November 21, 2025 12:06 PM  
**To:** james@jamesmithpa.com  
**Cc:** Thomas C. Hughes; Jason Luther  
**Subject:** South Carolina Department of Revenue, Respondent vs. Market Hall, LLC d/b/a Soda City Market, Appellant / Appellate Case No.: 2025-001745  
**Attachments:** 2025.11.21 DOR's Reply to MH's Return to DOR's MTD.pdf

Good afternoon, Mr. Smith,

I am attaching the Respondent's Reply to Appellant's Return to Respondent'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