THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Joel D. Barber..... Appellant,

v.

South Carolina Department of Labor, Licensing, and Regulation, Real Estate Commission..... Respondent.

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT
RALPH KING ANDERSON III, CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENT'S BRIEF

APPELLATE CASE NO. 2026-001883

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Administrative Law Court committed an error of law in applying Rule 4(B), SCALCR, where the court found as a matter of fact that the documents it received contained no Appellant's Brief, rather than adopting any rule that physical receipt is a prerequisite to filing by mail.
2. Whether substantial evidence supports the Administrative Law Court's finding that the package it received did not include an Appellant's Brief, where Appellant bore the burden of proving what he deposited in the mail.
3. Whether the Administrative Law Court abused its discretion in dismissing the appeal sua sponte under Rule 38, SCALCR, where Appellant failed to timely file any brief, the only brief he ever produced exceeded the thirty-page limit and omitted a docket number, an original signature, contact information, and proof of service, and Appellant — a pro se litigant held to the same rules as any party — identified no good-faith compliance the court overlooked.

STATEMENT OF THE CASE

On February 9, 2026, the South Carolina Real Estate Commission revoked Appellant's real-estate license and imposed a civil penalty of $5,000 for each violation, for a total of $15,000. (AMENDED ORDER OF DISMISSAL at 1) Appellant appealed to the Administrative Law Court (the "ALC"). The appeal was filed March 4, 2026, assigned March 6, 2026, and the Department filed the Record on Appeal on April 20, 2026. (Amended Order of Dismissal at 1.)

Under Rule 37(A), SCALCR, Appellant's principal brief was due within thirty days of the filing of the Record on Appeal — on or before May 20, 2026. (Amended Order of Dismissal at 2.) On May 26, 2026, the ALC received a binder of documents from Appellant, but those documents did not include an Appellant's Brief. (Amended Order of Dismissal at 1, 2.) On June 22, 2026, the Department filed its brief addressing Appellant's arguments; the ALC still had not received any brief from Appellant and wrote to the parties asking whether Appellant had served his brief. ((Amended Order of Dismissal at 2.) On July 7, 2026, Appellant responded, alleging he had mailed his brief on May 20, 2026, and enclosing a USPS mailing receipt, tracking information showing delivery on May 26, an ALC email of May 26 acknowledging receipt of documents, and a sixty-four-page document titled "Appellant's brief." (Amended Order of Dismissal at 2.) That sixty-four-page document exceeded the thirty-page limit and contained no docket number, no original signature, no contact information, and no proof of service. (Amended Order of Dismissal at 2.)

On August 6, 2026, the ALC dismissed the appeal sua sponte under Rule 38, SCALCR, for failure to comply with several of the court's Rules of Procedure, including the failure to timely file a brief. (Amended Order of Dismissal at 3.) The court recognized the "harsh result" but found itself "constrained by the rules and legal precedent." (Amended Order of Dismissal at 3.) The

appeal was dismissed with prejudice. (Amended Order of Dismissal at 2.) The ALC also held, in the alternative, that even if the sixty-four-page brief had been timely and properly filed, the court would not consider any argument past page thirty, and the first thirty pages cited no legal authority beyond the standard of review, rendering Appellant's issues abandoned. (Amended Order of Dismissal at 2.)

Appellant does not challenge the underlying disciplinary merits in this appeal. He asks this Court to vacate the dismissal and restore the appeal for merits review under a conforming briefing schedule. (Appellant's Designation of Matter to be Included in the Record on Appeal at 8.)

STANDARD OF REVIEW

This Court's review of an ALC order is governed by S.C. Code Ann. § 1-23-610(B). Review is confined to the record, and "[t]he court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 27, 885 S.E.2d 429 (Ct. App. 2023). The Court's "review is limited to determining whether the ALC's findings were supported by substantial evidence or were controlled by an error of law." *Id.* To sustain a finding, the Court "need only find that, upon looking at the entire record on appeal, there is evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Id.*

Where "the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 200, 833 S.E.2d 457, 458 (Ct. App. 2019). Substantial evidence is "more than a mere scintilla," but it is "not ...the evidence viewed blindly from one side of the case." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 201, 833 S.E.2d 451. 457-458 (Ct. App. 2019). The burden rests on Appellant, as the appealing party, "to prove convincingly

that the agency's decision is unsupported by the evidence." *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 643, 846 S.E.2d 383, 386 (Ct. App. 2020).

The ALC's choice of sanction for noncompliance is reviewed for abuse of discretion. S.C. Code Ann. § 1-23-610(B)(f). An abuse of discretion is shown only where the ruling "was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law," and "[t]he appealing party bears the burden of demonstrating that the lower court abused its discretion." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014).

ARGUMENT

I. The Administrative Law Court applied Rule 4(B) correctly; its determination that no brief was deposited or delivered is a finding of fact, not a legal "receipt" rule.

Appellant's lead argument rests on a misreading of the order below. He contends the ALC adopted a legal rule that physical receipt is a prerequisite to filing and thereby committed an error of law. The Amended Order shows otherwise. The ALC applied the governing standard — that filing by mail requires actual deposit of the document in the mail — and found as a matter of fact that the binder it received "did not include an Appellant brief." (Amended Order of Dismissal at 2.) That finding is reviewed for substantial evidence, not as a question of law.

A. Rule 4(B) requires proof that the document was actually deposited in the mail, and the burden of that proof falls on the party claiming to have mailed it.

Rule 4(B), SCALCR, deems a document filed by depositing it in the U.S. mail, properly addressed, with sufficient first-class postage, and fixes the filing date as the date of delivery or mailing. (Appellant's Designation of matter to be included in the record on appeal at 13.) That provision deems filed only the document actually deposited. Our Supreme Court has long held

that, where filing or service by mail is permitted, it "is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage," and that merely moving an item toward the mail "does not amount to service on the addressee" absent actual deposit of the operative document. *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987).

The dispositive question is therefore the one the ALC answered: was an Appellant's Brief among the documents Appellant actually deposited on May 20? Appellant bore the burden of proving that it was. *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020). Rule 4(B) supplies the legal standard; it does not resolve the factual dispute in his favor. Appellant concedes the point, acknowledging that "if the factfinder determines that the Brief was not actually in the package, Rule 4(B) provides no relief because the Brief itself was never deposited in the mail." (Amended Order of Dismissal at 2.) The ALC made exactly that determination.

A. The ALC did not create a receipt-based filing prerequisite; it found the Brief was never mailed or delivered.

The Amended Order does not hold that a properly mailed document is unfiled until received. It recounts that the Department timely filed its brief addressing Appellant's arguments while "the Court did not receive a copy of Appellant's brief," that the May 26 binder "did not include an Appellant brief," and that the only brief Appellant ever produced surfaced on July 7 and was itself deficient. (Amended Order of Dismissal at 2.) The later absence of any brief from the court's file was not substituted for the legal definition of filing; it was evidence of what Appellant deposited. Because the ALC applied the correct standard and resolved a factual dispute under it, there is no error of law to review de novo.

B. Chapman and Trowell do not apply; those cases involved undisputed, timely filings marred only by a form defect — not a dispute over whether any brief was filed at all.

Appellant relies on *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017) and *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009) for the principle that form should not defeat substance. Those decisions are inapposite because in each the filing itself was undisputed. In Chapman v. S.C. Dep't of Soc. Servs., 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017), the claimant's timely grievance letter indisputably reached the agency and "contained the same information required by Form 1449"; the only defect was its form, and this Court held that affirming dismissal on that basis would "elevate form over substance." *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017) As this Court explained, the companion case Paschal likewise involved a notice of appeal "timely received by the circuit court" and returned solely because it "lacked the civil cover sheet." *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017). In Trowell v. S.C. Dep't of Pub. Safety, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009), counsel "admit[ted] the facsimile was received by his office"; the only issue was the agency's novel, unwritten interpretation that faxed service started the appeal clock, which this Court found "overly harsh" and an arbitrary trap for the unwary petitioner. *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)

Here, by contrast, the ALC found it never received any brief at all. No substance over form reasoning can supply a document the factfinder determined was never filed. Those cases confirm the tribunal must apply the filing rule as written — and Rule 4(B), as written, deems filed only the document actually deposited in the mail. *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987).

II. Substantial evidence supports the finding that the package contained no Appellant's Brief, and this Court may not reweigh the evidence.

Even construed as a challenge to the ALC's factfinding, Appellant's argument fails. The question is not whether the record could support his account; it is whether reasonable minds could reach the conclusion the ALC reached. *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 27, 885 S.E.2d 422, 429 (Ct. App. 2023). They could.

The ALC's finding rests on direct record evidence: the Department timely received and answered Appellant's arguments, yet the binder Appellant mailed to the court contained no brief, and no brief surfaced until July 7. (Amended Order of Dismissal at 2.) That the court's package demonstrably arrived without a brief is itself "evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 28, 885 S.E.2d 429, 429 (Ct. App. 2023).

Appellant's contrary materials — his affidavit that he assembled matching packages, his photographs, and the USPS records (Appellant's Designation of Matter to be Included in the Record on Appeal at 9) — created, at most, a conflict in the evidence for the ALC to resolve. "When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 200, 833 S.E.2d 451, 457 (Ct. App. 2019). The Court cannot substitute its judgment for that of an administrative agency when the agency's factual findings are supported by substantial evidence, and "[t]he substantial evidence rule does not allow judicial fact-finding." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 34, 885 S.E.2d 422, 433 (Ct. App. 2023). Substantial evidence "is not …the evidence viewed blindly from one side of the case." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 201, 833 S.E.2d 451, 458 (Ct. App. 2019).

Appellant's reliance on the Department's receipt of his brief does not compel a different finding. His own affidavit states that he assembled two separate packages. (Appellant's Designation of Matter to be Included in the Record on Appeal at 9.) What the Department received establishes the contents of its package, not the court's; Appellant concedes that the Department's receipt "does not by itself prove what was inside the ALC's box." (Appellant's designation of matter to be included in the record on appeal at 17) Nor does the clerk's May 26 acknowledgment that documents arrived establish that a brief was among them — the ALC examined those documents and found no brief. (Appellant's designation of matter to be included in the record on appeal at 2.) Because the finding is supported by substantial evidence and the correct legal standard was applied, there is nothing to remand. Appellant has not carried his burden "to prove convincingly that the [ALC's] decision is unsupported by the evidence." *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 643, 846 S.E.2d 383, 386 (Ct. App. 2020).

III. The sua sponte dismissal under Rule 38 was a proper exercise of discretion, rested on multiple independent rule violations, and is independently sustained by the abandonment of Appellant's issues.

A. Rule 38 commits the sanction to the ALC's discretion, and review is deferential.

Rule 38, SCALCR, provides that, "on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals." (Amended Order of Dismissal at 2.) Appellant reads the permissive "may" as a bar to dismissal; it is in fact a grant of discretion. The imposition of sanctions "is generally entrusted to the sound discretion" of the tribunal, and a reviewing court "will not interfere" absent an abuse of discretion — shown only where the ruling "was without reasonable factual support, resulted in prejudice …and, therefore, amounted to an error of law."

Davis v. Parkview Apartments, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014). Appellant "bears the burden of demonstrating that the lower court abused its discretion." *Id.*

B. The dismissal rested on multiple independent rule violations, not a single curable defect.

The ALC did not dismiss over one technicality. It found that Appellant failed to timely file any brief by the May 20 deadline; that the binder received May 26 contained no brief; and that the sixty-four-page document produced on July 7 exceeded the thirty-page limit of Rule 37(A) and omitted the docket number, original signature, contact information, and proof of service required by Rules 6 and 37(B). (Amended Order of Dismissal at 2.) Appellant does not dispute these deficiencies; he concedes the sixty-four-page copy did not comply with the page limit and other formal requirements. (Appellant's Designation of matter to be included in the record on appeal at 11.) A tribunal does not abuse its discretion by dismissing where the appellant filed no conforming brief at all and the one document he did produce violated several mandatory rules. South Carolina courts enforce such rules even when the result is severe. See *McLain v. Ingram*, 314 S.C. 359, 360, S.E.2d 512, 513 (1994) (strictly enforcing a filing-sequence requirement and "recogniz[ing] the harsh result").

C. Appellant is held to the same procedural rules as any represented party.

That Appellant proceeded pro se does not excuse his noncompliance. "A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 10 (2003). As this Court has put it, "[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 403, 403, 368 S.E.2d 689, 689 (Ct.

App. 1988). Rule 8(A), SCALCR, codifies the same principle for proceedings before the ALC. The ALC was entitled to hold Appellant to the rules.

D. Appellant's proportionality cases do not control, and the governing sanctions authority favors affirmance.

Appellant leans on *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006); *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802 (1970), and *Gordon v. Busbee*, 367 S.C. 116, 623 S.E.2d 857 (Ct. App. 2005). Not one of those cases governs. *McComas v. Ross* and *Small v. Mungo* are failure-to-prosecute cases, not briefing-noncompliance cases. *Small v. Mungo*, 254 S.C. 438, 442 175 S.E.2d 802, 804 (1970) holds that whether to dismiss "is left to the discretion of the circuit judge and his decision will not be disturbed except upon a clear showing of an abuse of such discretion," and it found no abuse of discretion in the dismissal itself. *McComas v. Ross* was reversed only because the plaintiff "actively pursued her case" and "simply arrived late on the day of trial," with no "clear record of delay." 368 S.C. 59 at 63, 626 S.E.2d 902, 904, 905. *Gordon v. Busbee* is a statutory-construction decision holding that a probate statute requiring a claim "in the form prescribed by rule" 367 S.C. 116 at 119, 623 S.E.2d 857 at 859. did not mandate a particular form where the filed complaint already supplied every item the statute required. *Id.* Not one of those cases involved a litigant who failed to file any conforming brief.

The governing sanctions authority points the other way. In *Davis v. Parkview Apartments*, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014) the appellant argued dismissal was unduly harsh because "less 'draconian' punishments were available" and they "took extraordinary steps to avoid dismissal." *Id.* Our Supreme Court affirmed, holding the dismissal was not unduly harsh where the noncompliance was willful and the court had afforded "ample opportunity" to comply. *Davis v. Parkview Apartments*, 409 S.C. 266, 283, 762 S.E.2d 535, 544 (2014). So too here: the ALC

flagged the missing brief, sought a response, and dismissed only after no conforming brief materialized.

E. Actual notice to the Department does not cure the failure to file a conforming brief with the tribunal.

Appellant argues that because the Department received his brief and answered it, permitting a corrected brief would cause no prejudice. (Appellant's Designation of Matter to be Included in the Record on Appeal at 20) But a litigant's obligation to comply with the briefing rules runs to the tribunal, not merely to the opposing party. Rule 37's requirements govern the ALC's own consideration of the appeal and are not satisfied by service on the Department. Appellant identifies no authority that an opposing party's receipt of a nonconforming brief obligates the tribunal to accept a late, corrected one. The assumed absence of prejudice to the Department does not convert the ALC's enforcement of its rules into an abuse of discretion. *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535.

F. The abandonment holding independently sustains the dismissal.

Finally, the ALC held in the alternative that, even if the sixty-four-page brief were considered, the court would not review any argument past page thirty, and the first thirty pages cited no legal authority beyond the standard of review — rendering Appellant's issues abandoned. (AMENDED ORDER OF DISMISSAL at 2) That determination is independently correct. South Carolina courts deem an issue abandoned "if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 127, 716 S.E.2d 123, 127 (Ct. App. 2011). The Supreme Court has applied the rule to hold issues "abandoned given the arguments on those issues were conclusory." *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004). And "[w]hen a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."

Equivest Fin., LLC v. Ravenel, 422 S.C. 499, 506, 812 S.E.2d 438, 441(Ct. App. 2018). This Court may affirm for any ground appearing on the record. Rule 220(c), SCACR. Appellant's response — that he sought leave to file a corrected brief rather than to have the sixty-four-page copy treated as conforming (Appellant's Designation of Matter to be Included in the Record on Appeal at 20.) — depends entirely on his Rule 38 position, which fails for the reasons above.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the Administrative Law Court's August 6, 2026 Amended Order of Dismissal.

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Administrative Law Court committed an error of law in applying Rule 4(B), SCALCR, where the court found as a matter of fact that the documents it received contained no Appellant's Brief, rather than adopting any rule that physical receipt is a prerequisite to filing by mail.
2. Whether substantial evidence supports the Administrative Law Court's finding that the package it received did not include an Appellant's Brief, where Appellant bore the burden of proving what he deposited in the mail.
3. Whether the Administrative Law Court abused its discretion in dismissing the appeal sua sponte under Rule 38, SCALCR, where Appellant failed to timely file any brief, the only brief he ever produced exceeded the thirty-page limit and omitted a docket number, an original signature, contact information, and proof of service, and Appellant — a pro se litigant held to the same rules as any party — identified no good-faith compliance the court overlooked.

STATEMENT OF THE CASE

On February 9, 2026, the South Carolina Real Estate Commission revoked Appellant's real-estate license and imposed a civil penalty of $5,000 for each violation, for a total of $15,000. (AMENDED ORDER OF DISMISSAL at 1) Appellant appealed to the Administrative Law Court (the "ALC"). The appeal was filed March 4, 2026, assigned March 6, 2026, and the Department filed the Record on Appeal on April 20, 2026. (Amended Order of Dismissal at 1.)

Under Rule 37(A), SCALCR, Appellant's principal brief was due within thirty days of the filing of the Record on Appeal — on or before May 20, 2026. (Amended Order of Dismissal at 2.) On May 26, 2026, the ALC received a binder of documents from Appellant, but those documents did not include an Appellant's Brief. (Amended Order of Dismissal at 1, 2.) On June 22, 2026, the Department filed its brief addressing Appellant's arguments; the ALC still had not received any brief from Appellant and wrote to the parties asking whether Appellant had served his brief. ((Amended Order of Dismissal at 2.) On July 7, 2026, Appellant responded, alleging he had mailed his brief on May 20, 2026, and enclosing a USPS mailing receipt, tracking information showing delivery on May 26, an ALC email of May 26 acknowledging receipt of documents, and a sixty-four-page document titled "Appellant's brief." (Amended Order of Dismissal at 2.) That sixty-four-page document exceeded the thirty-page limit and contained no docket number, no original signature, no contact information, and no proof of service. (Amended Order of Dismissal at 2.)

On August 6, 2026, the ALC dismissed the appeal sua sponte under Rule 38, SCALCR, for failure to comply with several of the court's Rules of Procedure, including the failure to timely file a brief. (Amended Order of Dismissal at 3.) The court recognized the "harsh result" but found itself "constrained by the rules and legal precedent." (Amended Order of Dismissal at 3.) The

appeal was dismissed with prejudice. (Amended Order of Dismissal at 2.) The ALC also held, in the alternative, that even if the sixty-four-page brief had been timely and properly filed, the court would not consider any argument past page thirty, and the first thirty pages cited no legal authority beyond the standard of review, rendering Appellant's issues abandoned. (Amended Order of Dismissal at 2.)

Appellant does not challenge the underlying disciplinary merits in this appeal. He asks this Court to vacate the dismissal and restore the appeal for merits review under a conforming briefing schedule. (Appellant's Designation of Matter to be Included in the Record on Appeal at 8.)

STANDARD OF REVIEW

This Court's review of an ALC order is governed by S.C. Code Ann. § 1-23-610(B). Review is confined to the record, and "[t]he court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 27, 885 S.E.2d 429 (Ct. App. 2023). The Court's "review is limited to determining whether the ALC's findings were supported by substantial evidence or were controlled by an error of law." *Id.* To sustain a finding, the Court "need only find that, upon looking at the entire record on appeal, there is evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Id.*

Where "the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 200, 833 S.E.2d 457, 458 (Ct. App. 2019). Substantial evidence is "more than a mere scintilla," but it is "not ...the evidence viewed blindly from one side of the case." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 201, 833 S.E.2d 451. 457-458 (Ct. App. 2019). The burden rests on Appellant, as the appealing party, "to prove convincingly

that the agency's decision is unsupported by the evidence." *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 643, 846 S.E.2d 383, 386 (Ct. App. 2020).

The ALC's choice of sanction for noncompliance is reviewed for abuse of discretion. S.C. Code Ann. § 1-23-610(B)(f). An abuse of discretion is shown only where the ruling "was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law," and "[t]he appealing party bears the burden of demonstrating that the lower court abused its discretion." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014).

ARGUMENT

I. The Administrative Law Court applied Rule 4(B) correctly; its determination that no brief was deposited or delivered is a finding of fact, not a legal "receipt" rule.

Appellant's lead argument rests on a misreading of the order below. He contends the ALC adopted a legal rule that physical receipt is a prerequisite to filing and thereby committed an error of law. The Amended Order shows otherwise. The ALC applied the governing standard — that filing by mail requires actual deposit of the document in the mail — and found as a matter of fact that the binder it received "did not include an Appellant brief." (Amended Order of Dismissal at 2.) That finding is reviewed for substantial evidence, not as a question of law.

A. Rule 4(B) requires proof that the document was actually deposited in the mail, and the burden of that proof falls on the party claiming to have mailed it.

Rule 4(B), SCALCR, deems a document filed by depositing it in the U.S. mail, properly addressed, with sufficient first-class postage, and fixes the filing date as the date of delivery or mailing. (Appellant's Designation of matter to be included in the record on appeal at 13.) That provision deems filed only the document actually deposited. Our Supreme Court has long held

that, where filing or service by mail is permitted, it "is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage," and that merely moving an item toward the mail "does not amount to service on the addressee" absent actual deposit of the operative document. *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987).

The dispositive question is therefore the one the ALC answered: was an Appellant's Brief among the documents Appellant actually deposited on May 20? Appellant bore the burden of proving that it was. *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 846 S.E.2d 383 (Ct. App. 2020). Rule 4(B) supplies the legal standard; it does not resolve the factual dispute in his favor. Appellant concedes the point, acknowledging that "if the factfinder determines that the Brief was not actually in the package, Rule 4(B) provides no relief because the Brief itself was never deposited in the mail." (Amended Order of Dismissal at 2.) The ALC made exactly that determination.

A. The ALC did not create a receipt-based filing prerequisite; it found the Brief was never mailed or delivered.

The Amended Order does not hold that a properly mailed document is unfiled until received. It recounts that the Department timely filed its brief addressing Appellant's arguments while "the Court did not receive a copy of Appellant's brief," that the May 26 binder "did not include an Appellant brief," and that the only brief Appellant ever produced surfaced on July 7 and was itself deficient. (Amended Order of Dismissal at 2.) The later absence of any brief from the court's file was not substituted for the legal definition of filing; it was evidence of what Appellant deposited. Because the ALC applied the correct standard and resolved a factual dispute under it, there is no error of law to review de novo.

B. Chapman and Trowell do not apply; those cases involved undisputed, timely filings marred only by a form defect — not a dispute over whether any brief was filed at all.

Appellant relies on *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017) and *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009) for the principle that form should not defeat substance. Those decisions are inapposite because in each the filing itself was undisputed. In Chapman v. S.C. Dep't of Soc. Servs., 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017), the claimant's timely grievance letter indisputably reached the agency and "contained the same information required by Form 1449"; the only defect was its form, and this Court held that affirming dismissal on that basis would "elevate form over substance." *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017) As this Court explained, the companion case Paschal likewise involved a notice of appeal "timely received by the circuit court" and returned solely because it "lacked the civil cover sheet." *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 801 S.E.2d 401 (Ct. App. 2017). In Trowell v. S.C. Dep't of Pub. Safety, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009), counsel "admit[ted] the facsimile was received by his office"; the only issue was the agency's novel, unwritten interpretation that faxed service started the appeal clock, which this Court found "overly harsh" and an arbitrary trap for the unwary petitioner. *Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893 (Ct. App. 2009)

Here, by contrast, the ALC found it never received any brief at all. No substance over form reasoning can supply a document the factfinder determined was never filed. Those cases confirm the tribunal must apply the filing rule as written — and Rule 4(B), as written, deems filed only the document actually deposited in the mail. *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987).

II. Substantial evidence supports the finding that the package contained no Appellant's Brief, and this Court may not reweigh the evidence.

Even construed as a challenge to the ALC's factfinding, Appellant's argument fails. The question is not whether the record could support his account; it is whether reasonable minds could reach the conclusion the ALC reached. *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 27, 885 S.E.2d 422, 429 (Ct. App. 2023). They could.

The ALC's finding rests on direct record evidence: the Department timely received and answered Appellant's arguments, yet the binder Appellant mailed to the court contained no brief, and no brief surfaced until July 7. (Amended Order of Dismissal at 2.) That the court's package demonstrably arrived without a brief is itself "evidence from which reasonable minds could reach the same conclusion that the ALC reached." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 28, 885 S.E.2d 429, 429 (Ct. App. 2023).

Appellant's contrary materials — his affidavit that he assembled matching packages, his photographs, and the USPS records (Appellant's Designation of Matter to be Included in the Record on Appeal at 9) — created, at most, a conflict in the evidence for the ALC to resolve. "When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 200, 833 S.E.2d 451, 457 (Ct. App. 2019). The Court cannot substitute its judgment for that of an administrative agency when the agency's factual findings are supported by substantial evidence, and "[t]he substantial evidence rule does not allow judicial fact-finding." *Geohaghan v. S.C. Dep't of Emp. & Workforce*, 439 S.C. 14, 34, 885 S.E.2d 422, 433 (Ct. App. 2023). Substantial evidence "is not …the evidence viewed blindly from one side of the case." *A.O. Smith Corp. v. S.C. Dep't of Health & Env't Control*, 428 S.C. 189, 201, 833 S.E.2d 451, 458 (Ct. App. 2019).

Appellant's reliance on the Department's receipt of his brief does not compel a different finding. His own affidavit states that he assembled two separate packages. (Appellant's Designation of Matter to be Included in the Record on Appeal at 9.) What the Department received establishes the contents of its package, not the court's; Appellant concedes that the Department's receipt "does not by itself prove what was inside the ALC's box." (Appellant's designation of matter to be included in the record on appeal at 17) Nor does the clerk's May 26 acknowledgment that documents arrived establish that a brief was among them — the ALC examined those documents and found no brief. (Appellant's designation of matter to be included in the record on appeal at 2.) Because the finding is supported by substantial evidence and the correct legal standard was applied, there is nothing to remand. Appellant has not carried his burden "to prove convincingly that the [ALC's] decision is unsupported by the evidence." *Braxton v. S.C. Dep't of Corr.*, 430 S.C. 637, 643, 846 S.E.2d 383, 386 (Ct. App. 2020).

III. The sua sponte dismissal under Rule 38 was a proper exercise of discretion, rested on multiple independent rule violations, and is independently sustained by the abandonment of Appellant's issues.

A. Rule 38 commits the sanction to the ALC's discretion, and review is deferential.

Rule 38, SCALCR, provides that, "on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals." (Amended Order of Dismissal at 2.) Appellant reads the permissive "may" as a bar to dismissal; it is in fact a grant of discretion. The imposition of sanctions "is generally entrusted to the sound discretion" of the tribunal, and a reviewing court "will not interfere" absent an abuse of discretion — shown only where the ruling "was without reasonable factual support, resulted in prejudice …and, therefore, amounted to an error of law."

Davis v. Parkview Apartments, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014). Appellant "bears the burden of demonstrating that the lower court abused its discretion." *Id.*

B. The dismissal rested on multiple independent rule violations, not a single curable defect.

The ALC did not dismiss over one technicality. It found that Appellant failed to timely file any brief by the May 20 deadline; that the binder received May 26 contained no brief; and that the sixty-four-page document produced on July 7 exceeded the thirty-page limit of Rule 37(A) and omitted the docket number, original signature, contact information, and proof of service required by Rules 6 and 37(B). (Amended Order of Dismissal at 2.) Appellant does not dispute these deficiencies; he concedes the sixty-four-page copy did not comply with the page limit and other formal requirements. (Appellant's Designation of matter to be included in the record on appeal at 11.) A tribunal does not abuse its discretion by dismissing where the appellant filed no conforming brief at all and the one document he did produce violated several mandatory rules. South Carolina courts enforce such rules even when the result is severe. See *McLain v. Ingram*, 314 S.C. 359, 360, S.E.2d 512, 513 (1994) (strictly enforcing a filing-sequence requirement and "recogniz[ing] the harsh result").

C. Appellant is held to the same procedural rules as any represented party.

That Appellant proceeded pro se does not excuse his noncompliance. "A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 10 (2003). As this Court has put it, "[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 403, 403, 368 S.E.2d 689, 689 (Ct.

App. 1988). Rule 8(A), SCALCR, codifies the same principle for proceedings before the ALC. The ALC was entitled to hold Appellant to the rules.

D. Appellant's proportionality cases do not control, and the governing sanctions authority favors affirmance.

Appellant leans on *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006); *Small v. Mungo*, 254 S.C. 438, 175 S.E.2d 802 (1970), and *Gordon v. Busbee*, 367 S.C. 116, 623 S.E.2d 857 (Ct. App. 2005). Not one of those cases governs. *McComas v. Ross* and *Small v. Mungo* are failure-to-prosecute cases, not briefing-noncompliance cases. *Small v. Mungo*, 254 S.C. 438, 442 175 S.E.2d 802, 804 (1970) holds that whether to dismiss "is left to the discretion of the circuit judge and his decision will not be disturbed except upon a clear showing of an abuse of such discretion," and it found no abuse of discretion in the dismissal itself. *McComas v. Ross* was reversed only because the plaintiff "actively pursued her case" and "simply arrived late on the day of trial," with no "clear record of delay." 368 S.C. 59 at 63, 626 S.E.2d 902, 904, 905. *Gordon v. Busbee* is a statutory-construction decision holding that a probate statute requiring a claim "in the form prescribed by rule" 367 S.C. 116 at 119, 623 S.E.2d 857 at 859. did not mandate a particular form where the filed complaint already supplied every item the statute required. *Id.* Not one of those cases involved a litigant who failed to file any conforming brief.

The governing sanctions authority points the other way. In *Davis v. Parkview Apartments*, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014) the appellant argued dismissal was unduly harsh because "less 'draconian' punishments were available" and they "took extraordinary steps to avoid dismissal." *Id.* Our Supreme Court affirmed, holding the dismissal was not unduly harsh where the noncompliance was willful and the court had afforded "ample opportunity" to comply. *Davis v. Parkview Apartments*, 409 S.C. 266, 283, 762 S.E.2d 535, 544 (2014). So too here: the ALC

flagged the missing brief, sought a response, and dismissed only after no conforming brief materialized.

E. Actual notice to the Department does not cure the failure to file a conforming brief with the tribunal.

Appellant argues that because the Department received his brief and answered it, permitting a corrected brief would cause no prejudice. (Appellant's Designation of Matter to be Included in the Record on Appeal at 20) But a litigant's obligation to comply with the briefing rules runs to the tribunal, not merely to the opposing party. Rule 37's requirements govern the ALC's own consideration of the appeal and are not satisfied by service on the Department. Appellant identifies no authority that an opposing party's receipt of a nonconforming brief obligates the tribunal to accept a late, corrected one. The assumed absence of prejudice to the Department does not convert the ALC's enforcement of its rules into an abuse of discretion. *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535.

F. The abandonment holding independently sustains the dismissal.

Finally, the ALC held in the alternative that, even if the sixty-four-page brief were considered, the court would not review any argument past page thirty, and the first thirty pages cited no legal authority beyond the standard of review — rendering Appellant's issues abandoned. (AMENDED ORDER OF DISMISSAL at 2) That determination is independently correct. South Carolina courts deem an issue abandoned "if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 127, 716 S.E.2d 123, 127 (Ct. App. 2011). The Supreme Court has applied the rule to hold issues "abandoned given the arguments on those issues were conclusory." *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004). And "[w]hen a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."

Equivest Fin., LLC v. Ravenel, 422 S.C. 499, 506, 812 S.E.2d 438, 441(Ct. App. 2018). This Court may affirm for any ground appearing on the record. Rule 220(c), SCACR. Appellant's response — that he sought leave to file a corrected brief rather than to have the sixty-four-page copy treated as conforming (Appellant's Designation of Matter to be Included in the Record on Appeal at 20.) — depends entirely on his Rule 38 position, which fails for the reasons above.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the Administrative Law Court's August 6, 2026 Amended Order of Dismissal.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Chief Administrative Law Judge Ralph King Anderson III

Case No. 26-ALJ-11-0068-AP
Court of Appeals Case No. 2026-001803

Joel D. Barber ..... Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Funeral Services ..... Respondent.

PROOF OF SERVICE OF RESPONDENT'S BRIEF

I hereby certify that on October 14, 2026, I served my Respondent's Brief in the above-captioned matter to Appellant by depositing a copy hereof at the address set forth below.

Joel D. Barber
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Columbia, South Carolina
October 14, 2026

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South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services and Enforcement
Office of Disciplinary Counsel

Henry D. McMaster
Governor

Emily H. Farr
Director

October 14, 2026

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

RECEIVED
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SC Court of Appeals

Re: JOEL D. BARBER
Court of Appeal Case Number 2026-001883

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of **Respondent's Brief** in case **2026-001883** . Additionally, please find one (1) original and one (1) copy of the Certificate of service showing **Respondent's Brief** was served upon Mr. Barber. Lastly, you will find a self-addressed stamped envelope. If you could please mail back to me a clocked-in copy of both the brief and the certificate of service, I would greatly appreciate it. Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Kate D. Landess
Attorney for Respondent

ENCLOSURE(S)
cc: Joel D. Barber, Appellant

South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services and Enforcement
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Director

October 14, 2026

by way of Hand Delivery
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The State of South Carolina, Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

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Court of Appeal Case Number 2026-001883

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Sincerely,

Kate D. Landess
Attorney for Respondent

ENCLOSURE(S)
cc: Joel D. Barber, Appellant (***by way of first-class Mail***)

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UNITED STATES US

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TO HONORABLE JENNY ABBOTT KITCHINGS
THE STATE OF SC, COURT OF APPEALS
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