

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Consumer Affairs,

Docket No. 13-ALJ-30-0473-CC

Petitioner,

vs.

ORDER OF DISMISSAL

Entera Holdings, LLC, and Entera Work
Compensation Solutions, LLC,

Respondents.

The above-captioned matter is before the South Carolina Administrative Law Court (ALC or Court) for a contested case hearing. On September 30, 2013, Respondents Entera Holdings, LLC, and Entera Work Compensation Solutions, LLC, (Entera) filed a Request for Contested Case Hearing with this Court. On October 22, 2013, Petitioner South Carolina Department of Consumer Affairs (Petitioner or Department) filed a Motion to Dismiss stating that Entera untimely filed its Request for a Contested Case Hearing. On November 1, 2013, Entera filed a Response to Motion to Dismiss asking that the case be dismissed because the August 21, 2013 agency decision was never properly served on Entera. On November 8, 2013, the Department filed a Reply to Response to Motion to Dismiss.

The Department's decision dated August 21, 2013 shows it to be a final agency decision. That decision was received by both Respondent and Respondent's counsel on August 23, 2013. Entera's position that the agency decision was improperly served because it was delivered by Federal Express is wholly without merit.

The ALC is authorized to preside over contested cases concerning decisions of the South Carolina Department of Consumer Affairs. See S.C. Code Ann. §§ 1-23-600(B) (Supp. 2012). However, for this Court to hear such a contested case, its jurisdiction must be properly invoked through a timely request for a contested case. See Botany Bay Marina, Inc. v. Townsend, 296 S.C. 330, 372 S.E.2d 584 (1988) (holding that a party's failure to file an appeal of a zoning decision within the statutory time period divested the board of adjustment of jurisdiction to hear the appeal), overruled on other grounds by Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995);

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Burnett v. S.C. State Highway Dept., 252 S.C. 568, 167 S.E.2d 571 (1969) (holding that a landowner's failure to timely appeal a condemnation decision by the Highway Department deprived the reviewing court of jurisdiction to hear the appeal.) see also, e.g., Schaible Oil Co. v. N.J. Dept. of Env'tl. Prot., 586 A.2d 853, 855-56 (N.J. Super. Ct. App. Div. 1991) ("The statutory time limit for requesting an adjudicatory hearing is mandatory and jurisdictional[;] . . . enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature . . . and not with the agency or the courts."); Lewis v. N.C. Dept. of Human Res., 375 S.E.2d 712, 714 (N.C. Ct. App. 1989) ("The right to appeal to an administrative agency is granted by statute, and compliance with statutory provisions is necessary to sustain the appeal."). In the instant matter, Entera failed to timely serve its Request for a Contested Case Hearing to challenge the agency decision and, therefore, failed to properly invoke this Court's jurisdiction.

Pursuant to S.C. Code Ann. §§ 1-23-600(B) a party that files a request for a contested case hearing "must simultaneously serve a copy of the request on the affected agency." ALC Rule 11(C) requires a request for a contested case hearing to "be filed and served within thirty (30) days after the date of the written decision of the agency's determination." In the case at hand, Entera did not timely file or serve Petitioner with the Request for a Contested Case Hearing. Therefore, Entera did not cross the mandatory jurisdictional threshold. Accordingly, this Court has no choice but to find that Entera failed to properly invoke this Court's jurisdiction and to conclude that this matter must be dismissed. See Mears v. Mears, 387 S.C. 168, 337 S.E.2d 206 (1995). In dismissing this case, this Court wishes to emphasize that, while it is sympathetic to Entera's circumstances and realizes that this dismissal may seem unduly harsh, it has an obligation to carefully examine jurisdictional questions like that presented here, see, e.g., State v. Johnston, 327 S.C. 435, 438, 489 S.E.2d 228, 230 (Ct. App. 1997), rev'd on other grounds, 333 S.C. 459, 510 S.E.2d 423 (1999) (holding that "it is the duty of the court to assure that it renders no decision in a matter when it has no authority to act"), and is constrained from extending the time for filing and serving a request for a contested case or deeming an untimely request to be timely because of the filing party's mistake, inadvertence, surprise, or excusable neglect, see, e.g., Burnett, 252 S.C. at 570-71, 167 S.E.2d at 572. Therefore,

ORDER

For the reasons set forth above,

IT IS HEREBY ORDERED that Petitioner's motion to dismiss is **GRANTED** and the above-captioned case is **DISMISSED** with prejudice.

AND IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Deborah Brooks Durden". The signature is written in black ink and is positioned above a horizontal line.

Deborah Brooks Durden
Administrative Law Judge

November 26, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

November 26, 2013
Columbia, South Carolina

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December 6, 2013

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

**Re: South Carolina Department of Consumer Affairs v. Entera Holdins, LLC
and Entera Work Comp Solutions, LLC.
Docket No. 13-ALJ-30-0473-CC**

Dear Judge Durden:

I am in receipt of the above referenced order in this matter. Pursuant to Rule 29 I would appreciate it if you would reconsider it upon the following grounds:

1. The order does not address the issue of whether the original order was properly served under the terms and provisions of South Carolina Law.
2. The rules and regulations of the administrative law court do not allow for or provide for a return to a response from the moving party's original motion and, therefore, the items in Mr. Elaim's letter of November 8th should not have been considered.
3. The individual allegedly receiving the document is no longer employed by this law firm and the facts and circumstances of her alleged receipt of the same are unknown to the undersigned.
4. That the final paragraph of the original agency decision altered the terms of the letter and that the defendants, herein, complied with the requirements placed on them by the agency itself.
5. Any and all other matters raised in my original response which have not been directly addressed herein are requested to be preserved and considered by you.

Honorable Debra Brooks Durden
December 6, 2013
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Yours truly,

A handwritten signature in black ink, appearing to read "D. H. Keller", with a long horizontal flourish extending to the right.

David H. Keller

DHK/cva

cc: Elliot F. Elam (COS)

STATE OF SOUTH CAROLINA
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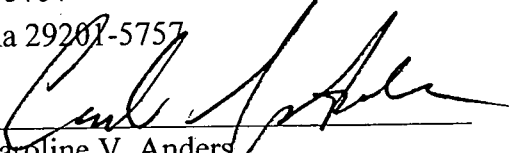
South Carolina Department of,)
Consumer Affairs)
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Petitioner,)
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vs.)
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Entera Holdings, LLC and Entera Work)
Compensation Solutions, LLC)
)
Respondents.)

CERTIFICATE OF SERVICE

I, Caroline Anders, say that I am the legal assistant for David Hill Keller, the attorney of the defendant, with Constangy, Brooks & Smith, LLP, in Greenville, South Carolina; and that on the 6th day of December, 2013, I mailed in a sealed envelope, postage prepaid, a copy of the Motion to Reconsider to the following person(s) at the following address:

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Elliot F. Elam, Jr.
Deputy Director
South Carolina Department of
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