

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

72088

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MAY 05 2014

SC Court of Appeals

Alexander Guice, .....Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.  
c/o Gallagher Bassett Service, Inc., .....Respondents'

**PETITION FOR REINSTATEMENT**

**PLEASE TAKE NOTICE** that ALEXANDER GUICE, the APPELLANT, proclaims the pleadings in this case are being filed by Appellant in *Propria Persona*, wherein pleadings are to be considered without regard to technicalities. Pursuant to Rule 240 SCACR Appellant submits this Petition for Reinstatement seeking the Court to reconsider the Order issued in the above captioned matter dated April 24, 2014 wherein the Court granted the Motion to Dismiss filed by the Respondents, on the following grounds:

- 1. The Order dated April 24, 2014 failed to properly state or adjudicate the Appellant's ground(s) in support of denying the Respondents' Motion to Dismiss.**

Appellant asserts the aforementioned Order issued by the Court dated April 24, 2014 failed to properly state or adjudicate any of the grounds properly asserted by the Appellant to deny the Respondents' Motion to Dismiss, to include;

- (A) The failure of the Respondents' to comply with Rule 240(c)(2) SCACR (“*a memorandum with citation of authorities in support of the motion*”) to dismiss, which the Respondents' failed to do, as required (*Appellant's Return and Counterclaim, paragraph 2, previously submitted*) ;
- (B) The failure of the Respondents' to comply with Rule 240(c) SCACR (“*The pages of the motion or petition and all supporting documents shall be consecutively numbered.*”) (*Appellant's Return and Counterclaim, paragraph 1, previously submitted*);
- (C) The failure of Commissioner Andrea C. Roche to adjudicate the Appellant's “Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments” which was also not addressed or adjudicated by the Full Commission or the lower court (*Appellant's Return and Counterclaim, paragraph 3, subsections “B” & “L”, previously submitted*); and
- (D) The alleged improper action of Commission Executive Director Gary M. Cannon to issue the March 27, 2013 decision regarding the aforementioned “Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments” (*Appellant's Return and Counterclaim, paragraph 3, subsections “C-G”, previously submitted*).

Appellant asserts none of the aforementioned arguments or grounds properly asserted by Appellant, as contained above, were stated or adjudicated in the Order dated April 24, 2014, which was required, pursuant to Rule 501(B)(1), CJC, Rule 501 SCACR. As such, Appellant asserts the aforementioned Order dated April 24, 2014 must be set aside to provide a proper adjudication of the Appellant's grounds in support of denying the Respondents' Motion to dismiss which was improperly absent from the same.

**2. The Order dated April 24, 2014 remanded this action back to the lower court when in fact the lower court has previously issued an opinion in this matter.** The lower court rendered a decision in this matter on June 10, 2013. As asserted by the Appellant, the Order dated June 10, 2013 failed to properly cite a statute, rule, or case law in support of the Order. Appellant asserts it would be improper for this Court to remand this action back to the lower court when the lower court has previously rendered a decision in this matter (*Appellant's Return and Counterclaim, paragraph 3, subsections "O", & "P", previously submitted*). As such, Appellant asserts the aforementioned Order dated April 24, 2014 must be set aside to provide a proper final adjudication of the Appellant's Appeal, by this Court, subsequent to the previous decision issued in this matter by the lower court.

**3. The Order dated April 24, 2014 failed to state or adjudicate the Appellant's proper assertion of Error(s) of Law with respect to the Commissions' unlawful approval of the "Settlement Agreement and Release".** As contained in the "Appellant's Return and Counterclaim", paragraph 4, subsection "A" and "Appellant's Reply to Respondents' "Reply" to Return and Counterclaim", pages, 4-5, sections "A" through "D" the Settlement Agreement and Release approved by the Commission on January 5, 2006 in this matter violated SC Code Ann. §42-1-610 and SC Code Ann. §42-1-620, in particular, based on the fact the Appellant had received compensation payments for more than, and including, the First 150 days IAW SC Code Reg. §67-506(D) and therefore the Appellant's lawful right to compensation payments could not be settled, waived, or the like, by way of Settlement Agreement and Release. Appellant also notes that the Respondents' did not **deny or counter** this FACT when afforded the opportunity to do so.

As such, Appellant asserts the Order dated April 24, 2014 must be set aside to provide a proper adjudication of the Appellant's aforementioned assertion of error(s) not stated or adjudicated in the same, which was required, pursuant to Rule 501(B)(1), CJC, Rule 501 SCACR.

**4. The Order dated April 24, 2014 granted the Respondents' Motion to Dismiss on grounds citing case law, but failed to challenge the Appellant's assertion of appealability pursuant to Rule 201 SCACR.** The Court granted the Respondents' Motion to Dismiss, in particular, by affirming the Respondents' position that the March 27, 2013 decision issued by Commission Executive Director Gary M. Cannon (Mr. Cannon) was not a final order, to include the citing of several cases in support of the Order of the Court. However, as contained in the Appellant's Return and Counterclaim, paragraph "3", subsection "P", Appellant asserted the lawful right to appeal the March 27, 2013 decision issued by Mr. Cannon. Rule 201 SCACR in relevant part states,

*"Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision."*

Appellant properly asserted that the March 27, 2013 decision rendered by Mr. Cannon summarily served as a final judgment due to the fact that neither the Commission in their "Decision and Order" dated July 17, 2013 nor the lower court in the Order dated June 10, 2013 rendered an opinion regarding the March 27, 2013 decision of Mr. Cannon. Further, Rule 201 SCACR clearly affords a party the legal right to challenge decisions, in addition to Final Judgments, Orders, and Final Orders before this Court.

Still further, application of the Court Rules **controls or supersedes** application of case law, as established in Rule 268 SCACR. Appellant asserts before the Court could

consider applicable case law proffered by the Respondents' in support of the Motion to Dismiss, the Court should have properly stated and adjudicated the Appellant's challenge of the appealability of the March 27, 2013 Decision of Mr. Cannon pursuant to Rule 201 SCACR; however, the Court failed to do so. As such, Appellant asserts the Order dated April 24, 2014 must be set aside to properly state and adjudicate the Appellant's proper challenge of the March 27, 2013 Decision of Mr. Cannon based on the proper assertion of Rule 201 SCACR.

**5. The Order dated April 24, 2014 is biased towards the Appellant and prejudiced the substantial rights afforded to the Appellant.** As it directly relates to the grounds asserted by the Appellant to deny the Respondents' Motion to Dismiss, the aforementioned April 24, 2014 Order states, "**Appellant filed a return.**" The Order fails to state or adjudicate any of the Appellant's grounds, with specificity, asserted in support of denying Respondents' Motion to Dismiss.

As it relates to the aforementioned Order dated April 24, 2014 failing to state or adjudicate any of the Appellant's grounds properly asserted in support of denying the Respondents' Motion to Dismiss, Rule 501(3)B(5), CJC, Rule 501 SCACR states in relevant part, "*A judge shall perform judicial duties without bias or prejudice.*" Based on the error of the Court to state or adjudicate the grounds properly asserted by the Appellant in support of denying the Respondents' Motion to Dismiss, Appellant's lawful right to be heard has substantially been prejudiced, pursuant to the Order dated April 24, 2014.

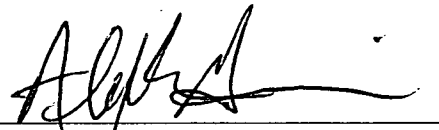
As such, Appellant asserts the Order dated April 24, 2014 must be set aside to properly state and adjudicate the Appellant's properly submitted grounds in support of

denying the Respondents' Motion to dismiss, as required, pursuant to Rule 501(3)B,  
CJC, Rule 501 SCACR

**CONCLUSION**

**WHEREFORE**, based on the foregoing, Appellant moves the Court to grant this  
Petition for Reinstatement by immediately setting aside the Order dated April 24, 2014,  
with prejudice, and issuing a revised Order regarding the Respondents' Motion to  
Dismiss **BECAUSE**:

1. **The Order dated April 24, 2014 failed to properly state or adjudicate the Appellant's ground(s) in support of denying the Respondents' Motion to Dismiss;**
2. **The Order dated April 24, 2014 remanded this action back to the lower court when in fact the lower court has previously issued an opinion in this matter;**
3. **The Order dated April 24, 2014 failed to state or adjudicate the Appellant's proper assertion of Error(s) of Law with respect to the Commissions' unlawful approval of the "Settlement Agreement and Release";**
4. **The Order dated April 24, 2014 granted the Respondents' Motion to Dismiss on grounds citing case law, but failed to challenge the Appellant's assertion of appealability pursuant to Rule 201 SCACR; and**
5. **The Order dated April 24, 2014 is biased towards the Appellant and prejudiced the substantial rights afforded to the Appellant.**



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Alexander Guice  
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Appellant, *pro se*

April 28, 2014

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
COURT OF COMMON PLEAS

Thomas A. Russo, Circuit Court Judge

Case No.: 2013-002491

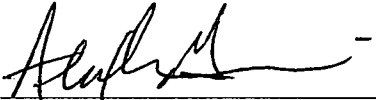
Alexander Guice, .....Appellant,

V.

US Foodservice, Inc., and Ace American Insurance Co.  
c/o Gallagher Bassett Service, Inc., .....Respondents'.

**PROOF OF SERVICE**

I HEREBY CERTIFY to the Clerk of Court that a copy of a 'Petition of Reinstatement' and proof of service was provided to the Respondents' by depositing the same in the US Postal Service on May 1, 2014 with sufficient postage to the Respondents' counsel of record, Erin L. Hantske and addressed to: Erin L. Hantske, Esq., McAngus Goudelock & Courie, LLC P.O. Box 650007 Mt. Pleasant, SC 29465 on this 1<sup>st</sup> day of May 2014.

  
\_\_\_\_\_  
Alexander Guice  
Post Office Box 13281  
Tampa, Florida 33681  
(813) 562-0547  
Appellant, *pro se*

May 1, 2014

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