

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2014-001652

SEP 23 2014

SC Court of Appeals

Alan Wilson, Securities Commissioner of South Carolina,

Respondent,

v.

Integrated Capital Strategies, LLC,

Appellant.

**RETURN TO APPELLANT'S MEMORANDUM IN SUPPORT OF
APPEALABILITY**

Respondent Alan Wilson, Securities Commissioner of South Carolina (the "Securities Commissioner") files this return to Appellant Integrated Capital Strategies, LLC's Memorandum in Support of Appealability. The Securities Commissioner, without commenting on the merits of the appeal itself, agrees with and hereby joins the legal argument of the Appellant as to the appealability of the instant matter, and would add only as follows.

I. FACTUAL BACKGROUND

This appeal arises from an investigation being conducted by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division"). On April 9, 2014, pursuant to S.C. Code Ann. § 35-1-602(b), the Securities Division validly issued and served an administrative subpoena (the "Subpoena") on Integrated Capital Strategies, LLC ("ICS"). The Subpoena seeks the production of various records in the custody of ICS and relevant to an ongoing Securities Division investigation. On May 6, 2014, ICS objected to the Subpoena on various grounds. Thereafter, the Securities Division instituted a summary proceeding in the Richland County Court of Common Pleas, pursuant to S.C. Code Ann. § 35-1-602(c), and seeking judicial enforcement of the Subpoena. Following a June 10, 2014 hearing, the Honorable G. Thomas Cooper, Jr. issued an Order Requiring Compliance with a Subpoena (the "Order"). Subsequently, ICS filed notice of appeal and this Court requested that it file a Memorandum in Support of Appealability. The Court has requested that the Securities Commissioner file this return in response to ICS's memorandum.

II. ARGUMENT

As stated above, the Securities Commissioner agrees with the Appellant that the Order is immediately appealable. The sole purpose of the summary proceeding below was to seek enforcement of the Subpoena. Thus, the Order represents the final order in a special proceeding as contemplated by S.C. Code Ann. § 14-3-330 (3)

(Supp. 2012). Indeed, once the materials sought by the Subpoena are produced, the summary proceeding below, from which the appeal originated, will be closed and there will be no matters remaining to be litigated.¹ While South Carolina case law is lacking in decisions related to the enforcement of administrative subpoenas, federal courts are replete with examples which make clear that final orders in such actions are immediately appealable.² See, e.g., *Cobbledick v. United States*, 309 U.S. 323, 330 (1940) (“The proceeding [to enforce a Commerce Department subpoena] before the district court is not ancillary to any judicial proceeding. So far as the court is concerned, it is complete in itself.”); *In re Subpoena Duces Tecum*, 228 F.3d 341, 346 (4th Cir. 2000) (such orders are considered final); *Reich v. Nat’l Eng’g & Contracting Co.*, 13 F.3d 93, 96 (4th Cir. 1993) (collecting cases). The situation is the same here, the Order is the final judgment of a summary proceeding; and, as a result, S.C. Code Ann. § 14-3-330 (3) should apply, rendering the Order immediately appealable.

¹ The Securities Commissioner may, during the course of this ongoing investigation, bring additional proceedings to enforce other subpoenas, or civil or administrative actions to remedy violations of the South Carolina Uniform Securities Act, but such matters would be wholly separate from the current circuit court proceeding.

² The relevant federal statute is 28 U.S.C.A. § 1291 (West) which states that “[t]he courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all *final decisions* of the district courts of the United States...” (emphasis added).

III. CONCLUSION

For the reasons stated by the Appellant in its memorandum, and those set forth above, the Securities Commissioner submits that the Order is appealable.

Respectfully Submitted,

ALAN WILSON
Securities Commissioner

TRACY A. MEYERS
Deputy Securities Commissioner

IAN P. WESCHLER
Assistant Attorney General

By: 

Ian P. Weschler
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September 23, 2014.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the enclosed Return to Appellant's Memorandum on Appealability on Integrated Capital Strategies, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2014, and addressed to its counsel of record, James M. Griffin, Esq., Lewis Babcock & Griffin, L.L.P., Post Office Box 11208, Columbia, South Carolina 29211.

September 23, 2014



Ian P. Weschler
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ALAN WILSON
SECURITIES COMMISSIONER

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SEP 23 2014

September 23, 2014

SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

***Re: Alan Wilson, Securities Commissioner of South Carolina v.
Integrated Capital Strategies, LLC, Appellate Case
No. 2014-001652***

Dear Ms. Kitchings:

Please find enclosed, for filing with your office, the original and six (6) copies of the Respondent's Return to Appellant's Memorandum in Support of Appealability in the above-referenced matter.

If I can be of any further assistance, please contact me at (803) 734-3718.

Sincerely yours,

Ian P. Weschler
Assistant Attorney General

IPW/

cc: James M. Griffin, Esq. (via First-Class Mail)