

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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MAR 19 2015

Deborah Brooks Durden, Administrative Law Judge SC Court of Appeals

Docket No. 2014-000246

South Carolina Department of Consumer Affairs,.....Respondent,

v.

Entera Holdings, LLC and Entera Work Comp Solutions, LLC,Appellants.

PETITION FOR REHEARING

David Hill Keller
Constangy, Brooks, Smith & Prophete, LLP
110 W. North Street, Suite 150
Greenville, South Carolina 29201

Pursuant to South Carolina Appellate Court Rule 221, the appellants, Entera Holdings, LLC and Entera Work Comp Solutions, LLC, do hereby petition the Court for rehearing of its Order filed March 4, 2015 upon the following grounds:

ISSUE I

Service of the original document in this matter never has been completed. The Appellants, herein continue to believe that the State of South Carolina and its administrative agencies should be held to the same standard as all other potential litigants in the state. There is no authority anywhere in any of the Court Rules for service of legal papers by any other method other than the United States Postal Service. While this procedure of the South Carolina Court Rules may be archaic, nonetheless all of the judicial agencies of the State of South Carolina, including this Court, require service by U.S. Mail and will not accept service by any other method, other than hand-delivery. It is therefore submitted that the Court should reconsider its determination on Issue I and find that the agency determination was never properly served and that service has never been accomplished.

ISSUE II

The final staff determination is not a contested case under the Administrative Procedures Act. The Court, in its Opinion, found that the because the words "final agency decision" were capitalized that this somehow makes the decision legally correct. The Court should review the record in this matter and realize that the Appellants requested multiple meetings with the agency and that these meetings were denied, or never occurred. Further the Appellants would request the Court to review the fact that the letter of August 21, 2013, in the body thereof was called a final staff decision and does not qualify as an "agency decision" under the South Carolina Rules of Court.

ISSUE III

The letter of August 21, 2013 does not constitute a final agency decision. This particular issue is truly, the crux of Appellants' Request for Reconsideration. It is axiomatic in legal matters that the law construes of legal documents with a special view toward the drafter of such document. It is, and remains, the contention of Appellants that the State should not only be held to the same standard as the drafter of all other documents, but should, in fact, be held to a higher standard. It is uncontested that the letter requires Appellant to respond **to the agency** within thirty days of receipt of the letter, which Appellants did. (ROA p.20; pg. 32) The Appellants continue to contend that Mr. Elam, the director of the agency, advised the parties that the letter was not a final agency decision (ROA p.20) and Mr. Elam specifically altered the terms and provisions of the staff decision by requiring Appellants to contact the "agency" and not the Administrative Law Court within 30 days. The Appellants contend that any reasonably prudent person reading this letter would have relied on the statements of the Agency that it was necessary to contact them which Appellants did.

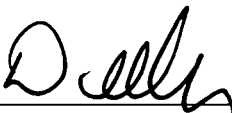
Appellants would concede that Mr. Elam has probably placed this language in every letter that he has ever sent and that he likely did not even read the "boilerplate" portion of the letter before it was sent. However, Appellants would ask the Court to specifically reconsider its decision as to this issue.

While there was no testimony ever taken in this matter, the letter itself should be reviewed in a light most favorable to Appellants and be strictly construed against the drafter, particularly because the drafter is the State of South Carolina. It is clear the Agency altered the requirements stated earlier in the letter by stating that Appellants were required to contact the agency, not the Administrative Law Court.

IT IS THEREFORE RESPECTFULLY SUBMITTED that the determination of the Court of Appeals be reconsidered and that Opinion No. 2015-UP-102 of March 4, 2015 be withdrawn

and that the Court (1) make a determination that a remand to the Administrative Law Court is required regardless of any other error because of the reasons state herein.

DATED: 3/19, 2015

By:  _____
David Hill Keller, Esq.
Bar # 003345
Constangy, Brooks, Smith & Prophete, LLP
Attorney for Appellants

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

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South Carolina Department of Consumer Affairs,.....Respondent,

v.

Entera Holdings, LLC and Entera Work Comp Solutions, LLC,Appellants.


CERTIFICATE OF SERVICE

I, Sally Drawdy, say that I am the legal assistant for David H. Keller, attorney for Appellants Entera Holdings, LLC and Entera Work Comp Solutions, LLC with CONSTANGY, BROOKS, SMITH & PROPHETE, LLP in Greenville, South Carolina; and on the 19th day of March, 2014, a copy of the Appellants Petition for Rehearing was hand-delivered to the South Carolina Court of Appeals and copies were mailed in a sealed envelope, postage prepaid, along with a certificate of service on opposing counsel and the following person(s) at the following addresses:

Elliot F. Elam, Jr., Esq., Deputy Director
South Carolina Department of Consumer Affairs
P.O. Drawer 11649
Columbia, SC 29211

Hana Pokorna-Williamson, Esquire
South Carolina Department of Consumer Affairs
2221 Devin Street
Columbia, SC 29204

Mr. J. Matthew Aronson, Esquire
500 Gills Creek Parkway, Apt. 1814
Columbia, SC 29209


Sally Drawdy
Legal Assistant to David H. Keller
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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
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South Carolina Department of Consumer Affairs,
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v.

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

SC Court of Appeals

Appellate Case No. 2014-000246

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Unpublished Opinion No. 2015-UP-102
Submitted January 1, 2015 – Filed March 4, 2015

AFFIRMED

David Hill Keller, of Constangy Brooks & Smith, LLP,
of Greenville, for Appellants.

Hana Pokorna-Williamson, Elliott F. Elam, Jr., and J.
Matthew Aronson, all of the South Carolina Department
of Consumer Affairs, of Columbia, for Respondent.

PER CURIAM: Entera Holdings, LLC and Entera Work Compensation Solutions, LLC (collectively, Entera) appeal the Administrative Law Court's (ALC) dismissal of their request for a contested case. Entera argues: (1) the Department of Consumer Affairs (the Department) never properly served its final decision; (2) the Department's letter informing Entera of its decision did not constitute a final agency decision; (3) Entera was not afforded an opportunity for a contested case before the Department; (4) Entera timely filed its request for a contested case within thirty days of receiving notice of the Department's final decision; and (5) the Department improperly supplemented the record after Entera filed its response to the Department's motion to dismiss. We affirm.

1. As to issue one, we find the Department provided the required notification of its decision. *See* S.C. Code Ann. § 40-68-160(E) (2011) (requiring that an entity subject to disciplinary action by the Department must be given notice of the decision); S.C. Code Ann. § 1-23-350 (2005) (requiring final agency decisions be in writing or stated in the record and directing that "[p]arties shall be notified either personally or by mail of any decision or order"); Rule 5, SCALCR ("Service shall be made upon counsel if the party is represented, or if there is no counsel, upon the party. Service shall be made by delivery").

2. As to issue two, we find the document the Department sent to Entera was the final agency decision because "Final Agency Decision" was capitalized, underlined, and written in bold letters at the top of the document.

3. As to issue three, we find Entera could only challenge the Department's decision in a contested case hearing before the ALC. *See* S.C. Code Ann. § 40-68-160(B) (2011) ("The [D]epartment may take disciplinary action against a . . . person engaging in professional employer services without a license"); § 40-68-160(E) ("All contested hearings pursuant to this section are before the [ALC].").

4. As to issue four, we find substantial evidence supports the ALC's finding Entera received notice of the decision on August 23, 2013. Therefore, its request for a contested case was untimely, and the ALC did not have jurisdiction to hear the case. *See Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008) ("The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law."); S.C. Code Ann. § 1-23-600(B) (Supp. 2014) ("All requests for a hearing before the [ALC] must be filed in accordance with the [ALC's] rules of procedure."); Rule 11(C), SCALCR (stating a request for a

contested case hearing before the ALC "must be filed and served within thirty (30) days after actual or constructive notice of the agency's determination"); *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 585-86 (1988) (finding the failure to appeal the Board of Adjustment's zoning decision within the fifteen days allowed for filing an appeal 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); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (stating "[s]ervice of the notice of intent to appeal is a jurisdictional requirement," and courts are unable to extend or expand the time in which the notice of appeal must be served).

5. As to issue five, we find the Department complied with Rule 19, SCALCR, in filing its reply and did not improperly supplement the record. *See* Rule 19(A), SCALCR (providing procedures for pre-hearing motions, responses, and replies).

AFFIRMED.¹

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.





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March 19, 2015

VIA HAND DELIVERY

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

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SC Court of Appeals

**Re: South Carolina Department of Consumer Affairs v. Entera Holdings, LLC and
Entera Work Comp Solutions, LLC.
Docket No. 2014-000246**

Dear Ms. Kitchings:

Enclosed please find original and six copies of Appellants' Petition for Rehearing, along with my certificate of service, and a firm check for the \$25.00 filing fee. Should you have any questions, please feel free to contact me.

Yours truly,

David H. Keller

DHK/sbd
Enclosures

cc: Elliott F. Elam, Jr. Esquire
Hana Pokorna-Williamson, Esquire
J. Matthew Aronson, Esquire