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May 7, 2015

SC Court of Appeals

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VIA HAND DELIVERY

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

RE: Hugh Allen Palmer, Appellant v. Richland County Assessor, Respondent
Appellate Case No.: 2015-000514
Our File: 2393-4791

Dear Ms. Kitchings:

This letter is written in response to the above referenced Respondent's letter to the Court dated April 29, 2015. Though no leave of Court was given to continue arguing this matter, I believe that Appellant deserves the opportunity to counter Respondent's arguments contained in the letter. Alternately, the Court may of course disregard both letters as it so chooses.

To begin with, the South Carolina Supreme Court recently held that "[t]he plain language of section 1-23-380(1) indicates that the legislature, by including the phrase 'if a rehearing is requested,' intended to allow motions for rehearing before all administrative agencies that are governed by the Administrative Procedures Act (APA)." *Rhame v. Charleston County School District*, 2015 WL 1814019, *3 (April 22, 2015). Note that the Administrative Law Court (ALC) is an "agency" for purposes of the APA, *see* S.C. Code Ann. § 1-23-310(2), and there can be no dispute that the APA governs this property tax appeal.

In light of this clear, direct precedent, Respondent's fundamental argument is that section 1-23-380(1) does not apply to appeals from the ALC. However, it is not clear how Respondent reaches that conclusion, particularly in light of direct citations to the statute in recent property tax decisions such as *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 ("Tax appeals to the ALC are subject to the Administrative Procedures Act (APA). Accordingly, we review the decision of the ALC for errors of law. S.C. Code Ann. § 1-23-380(5)(d) (Supp. 2010).") (case citation omitted) and *Mitul Enterprises, L.P. v. Beaufort County Assessor*, 410 S.C. 430, 432, 764 S.E.2d 720, 721 (Ct. App. 2014) ("A party who has exhausted all administrative remedies available within an agency and who is aggrieved by an ALC's final decision in a contested case is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp.2013).")

Respondent also appears to contend that the *Rhame* case is distinguishable because it is an appeal from the Workers' Compensation Board. However, Respondent previously had no trouble relying on the *Rhame* decision (incorrectly at that) after the South Carolina Court of Appeals held that there was no right to request a rehearing based on a statutory scheme that was specific to workers' compensation cases. See *Rhame v. Charleston County School Dist.*, 399 S.C. 477, 481-83 732 S.E.2d 202, 204 (Ct. App. 2012) (relying on S.C. Code Ann. §§ 42-17-50 & -60). Conveniently, only now that the South Carolina Supreme Court reversed that decision and held that general law of section 1-23-380(1) provides a right to request a rehearing for all matters brought under the APA, even despite the arguably conflicting specific workers' compensation statute, does Respondent now find the *Rhame* case to be distinguishable.

Respondent next argues that section 1-23-610 and ALC Rule 31 do not allow for requests for rehearing. However, as previously noted in Appellant's Return, S.C. Code Ann. § 1-23-610(A)(1) provides that "[f]or judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases" To that end, Rule 59(a), SCRCR provides that rehearings may be requested in the courts of common pleas, and Rule 203(b)(1), SCACR provides that "[w]hen a timely motion for...new trial (Rule 59, SCRCR) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." Thus, rather than prohibiting requests for rehearing, section 1-23-610 does the opposite.

As for ALC Rule 31, it simply provides that "[t]he decision of the administrative law judge may be appealed as provided by law." Accordingly, the ALC Rules by their own terms incorporate the right to request a rehearing of an ALC decision as provided in various statutes, rules of procedure, and cases. See, e.g., S.C. Code Ann. §§ 1-23-380(1), -610(A)(1) & -650(B); Rules 203(b)(1) & (6), SCACR; Rule 59(a), SCRCR; *Rhame v. Charleston County School District*, 2015 WL 1814019 (April 22, 2015); *McCummings v. S.C. Dept. of Corrections*, 319 S.C. 440, 462 S.E.2d 271 (1995).

However, even if ALC Rule 31 did not expressly incorporate the laws that allow for a rehearing request, such law would necessarily be implied because "an ALC rule may not alter the provisions of a statute" and "ALC rules may not be promulgated unless they are consistent with the rules of procedure governing civil actions in courts of common pleas." *Heath Hill v. S.C. Dept. of Health & Envtl. Contr. and SCE&G*, Docket No. 10-ALJ-07-0625-CC, 2010 WL 5781666 *11 (Dec. 9, 2010) (quotation omitted). See also *Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 677 S.E.2d 582 (2009) (holding that Rule 59(e), SCRCR must be read into the SCRALC where the SCRALC did not expressly provide for the same).

Respondent also appears to argue that Administrative Law Court Rule 68 gives the ALC discretion to deny Appellant's motion for rehearing without decision by the mere passage of time, and without notice to Appellant of such time limit. However, it should certainly go without saying that Appellant cannot be denied an important legal right without any notice that the passage of time could somehow eliminate that right. *See, e.g., Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) ("civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party."). Here, Appellant had no notice of any rule automatically denying rehearing requests (as it does not exist) nor can Respondent claim to either since Respondent apparently did not realize that the underlying right even existed.

Similarly, Appellant also had no notice that Respondent would ultimately make the claim that rehearing request are prohibited – such claim being conspicuously absent from Respondent's "Response To Petitioner's Motion To Alter Or Amend Or For A Rehearing" – or Appellant would have avoided the whole issue by filing an earlier appeal. As it stands, however, Appellant was simply taking the courteous, and legally proper, course of action by waiting for the ALC to provide a ruling on Appellant's motion for a rehearing. Accordingly, Respondent's suggestion that Appellant should not have waited for the ruling is not only without legal support, but would also be detrimental to orderly court procedure and respect for the judiciary.

In conclusion, Appellant would again ask that the South Carolina Court of Appeals to dismiss Respondent's Motion To Dismiss as well as consider sanctions for the lack of basis in pursuing it, *see* Rule 269, SCACR, particularly after a decision of the South Carolina Supreme Court has settled the matter beyond any reasonable question, *see Rhame*, 2015 WL 1814019 *3. Unfortunately, however, it would appear that Respondent is simply bent on pressing this issue regardless of all overwhelming authority to the contrary, and despite the continued unnecessary costs to Appellant, the taxpayers of Richland County, and the South Carolina Court of Appeals.

Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions. With warm regards, I remain,

Yours truly,

SWEENY, WINGATE & BARROW, P.A.



Matthew J. Myers

cc: Malane S. Pike, Esquire
Hugh Allen Palmer

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