THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2015-001161

South Carolina Department of Consumer Affairs,

Respondent,

v.

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

Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WAS THE AGENCY LETTER OF AUGUST 21, 2013, A FINAL AGENCY DECISION?

II. WAS SERVICE OF THE ORIGINAL DOCUMENT IN THIS MATTER COMPLETED PURSUANT TO SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

III. DID THE COURT OF APPEALS REACH THE ISSUE PRESENTED ABOVE IN QUESTION I?

INTRODUCTION

Petitioners, Entera Holdings, LLC and Entera Work Comp Solutions, LLC (Entera), petition this Court for a Writ of Certiorari to review the Court of Appeals' unanimous and unpublished decision in South Carolina Department of Consumer Affairs v. Entera Holdings and Entera Work Comp Solutions, LLC, filed March 4, 2015 (Unpublished Opinion No. 2015-UP-102). Because there are no novel questions of law, the decision was unanimous, and there is no conflict with this Court's prior decisions, the Petition for a Writ of Certiorari should be denied.

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. This case presents no special or important reasons for review. Petitioners simply seek to reargue the case.

The Court of Appeals found unanimously that the document notifying Entera of the South Carolina Department of Consumer Affairs' (Department) decision was the final agency decision and that Entera was served required notification of the Department's decision. Subsequently, the Court of Appeals unanimously found that the Petition for Rehearing should be denied on April 24, 2015.

The Court of Appeals' opinion does not conflict with any other decisions of this Court. This case presents no novel or important questions. The Court of Appeals' decision was unpublished and did not create any binding precedent. Accordingly, the Court should refuse to reargue the case and deny the Petition for Writ of Certiorari.

COUNTER-STATEMENT OF THE CASE

This matter comes before the Court on the Petition for a Writ of Certiorari (Petition) filed by Entera Holdings, LLC and Entera Work Comp Solutions, LLC (collectively Entera). The Petition challenges the Order of the Court of Appeals affirming the Administrative Law Court's dismissal of Entera's request for a contested case hearing on a final agency decision of the Department of Consumer Affairs (Department). The final agency decision cited Entera for operating as a Professional Employer Organization (PEO) in South Carolina without a license. (R. p. 14).

As documented in Federal Express shipping labels and online tracking histories, the Department's decision dated August 21, 2013, was received separately by both Entera and its outside counsel on Friday, August 23, 2013. (R. pp. 24-27). Entera mailed its request for a contested case to the Administrative Law Court (ALC) on September 30, 2013. (R. p. 4). On October 22, 2013, the Department filed a Motion to Dismiss with the ALC. (R. p. 21). Entera filed its Response to the motion on November 1, 2013. (R. p. 28). The Department received a copy of the Response by U.S. Mail on November 4, 2013. On November 8, 2013, the Department filed a Reply to Entera's Response. (R. p. 33). On November 26, 2013, Judge Durden issued an Order of Dismissal. (R. p. 1). On December 6, 2013, Entera filed a request for reconsideration. (R. p. 38). That request was deemed denied pursuant to ALC Rule 29(D)(4) when the court declined to issue a ruling on the request. Entera timely filed its Notice of Appeal with the Court of Appeals. The Court of Appeals issued an Order on March 4, 2015, affirming the ALC's decision. Entera filed a Petition for Rehearing with the Court of Appeals which was subsequently denied on April 24, 2015. Entera then filed this petition on May 26, 2015.

ARGUMENT

I. The Department's Letter of August 21, 2013, was a final agency decision.

In its discussion of Issue I, Entera asserts, "the issue is when a state agency gives specific instructions to an entity which they regulate, and the regulated entity specifically follows those instructions, can the state agency then rely on prior language in order to issue a civil fine upon a regulated body." (Petition p. 4). Entera cites language contained on page seven of the decision to support this assertion. While it is unclear which issue Entera is addressing, the Department will address them in the order they are raised.

In its Petition, Entera states that the Department's correspondence dated August 21, 2013, constitutes a final agency decision of which a request for rehearing was filed and remains pending. Entera cites Rhame v. Charleston Co. School Dist., Op. No. 27516 (S.C. Sup. Ct. filed Apr. 22, 2015) (Davis Adv. Sh. No. 16 at 22) to support its assertion that a rehearing was properly requested in a letter to the Department within thirty days of the receipt of the final agency decision. Rhame addresses S.C. Code Ann. section 1-23-380(1) (Supp. 2014)[1] which reads in pertinent part: "Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered." This case, however, is distinguishable from Rhame, because here, the Department is an "agency" as defined by section 1-23-505(2), not as defined by section 1-23-310(2).

In Rhame, the state agency was authorized to hold hearings for contested cases and was thus an agency under section 1-23-310(2). Here, the Department is not authorized to

[1] Any further reference to the South Carolina Code of Laws will be by Code Section only.

hold hearings for contested cases involving its regulated industries; rather, contested cases involving final agency decisions of the Department must be contested at the ALC. See S.C. Code Ann. § 40-68-160(B), (E) (Supp. 2014); see also S.C. Code Ann. § 1-23-505(2). Because the Department is an agency whose contested cases are heard by an administrative law judge, the requirement for timely filing a request for a contested case hearing is governed by ALC Rule 11 rather than section 1-23-380(1). See S.C. Code Ann. § 40-68-160(B), (E) (Supp. 2014); see also § 1-23-600(B) (all requests for a hearing before the ALC must be filed in accordance with the ALC's rules of procedure); see also § 37-6-414(B) (contested case proceedings are instituted by filing a request for contested case hearing with the ALC according to the rules of procedure of the ALC); see also S.C. Code Ann. § 1-23-505(2); see also ALC Rule 11(C). The proper venue for a motion to reconsider was before the ALC pursuant to Rule 29(D). Entera complied with Rule 29(D) by timely filing its motion for reconsideration on December 6, 2013 with the ALC, which denied the motion pursuant to ALC Rule 29(D)(2). (R. pp. 38-39).

Entera next makes an alternate argument in asserting that the August 21, 2013 letter does not constitute a final agency decision as it purportedly contains ambiguous language. (R. p. 14). The final agency decision states that if Entera disagreed with the findings, its remedy was to request a contested case before the ALC within the timeframe prescribed by statute. S.C. Code Ann. § 40-68-160(E) (Supp. 2014); S.C. Code Ann. § 37-6-108(A), (C); ALC Rule 11.

Contrary to Entera's argument, the final paragraph of the decision did not in any way alter the process set forth in the final agency decision. The Department's language informing Entera of its intent to directly give notice of the decision to Entera's clients

after 30 days was indication of the Department's next action should Entera fail to either file a license application and pay an administrative penalty or request a contested case hearing at the ALC.

A similarity in both Entera's arguments pertaining to the Department's August 21, 2013 decision, however, is that no supporting authority or cohesive argument is made. An assertion which offers no supporting authority or argument is deemed effectively abandoned and will not be reviewed. First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513, 514 (1993); see also Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (stating that where an appellant makes only conclusory statements, he has abandoned an issue); Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991).

Entera's claim that the Department's letter of August 21, 2013, was not a final agency decision offers no authority or basis for support, and this assertion should be deemed abandoned. Further, contested case hearings concerning the Department's regulatory statutes are held before the ALC, not the Department. See S.C. Code Ann. § 40-68-160(E) (Supp. 2014); see also S.C. Code Ann. § 37-6-414 (Supp. 2014). Entera's argument that a contested hearing before the Department was required before there could be a contested hearing before the ALC is confusing at best, and completely without merit. Because the letter clearly constituted a final agency decision and its appropriate venue for a contested case is the ALC, the Court should uphold the Court of Appeals' affirmation of the ALC's dismissal.

II. The service of the original document in this matter was completed pursuant to the South Carolina Rules of Civil Procedure.

In its Petition, Entera argues that the service of the Department's decision in this matter was not procedurally proper. However, Entera fails to cite any authority supporting this proposition. In First Sav. Bank v. McLean, this Court found an appellant failed to preserve an issue for review, noting that "[a]ppellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue." 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Entera's failure to provide any citation or authority for its assertion that service was not procedurally proper should also be deemed as abandonment of the issue and not subject to review by this Court.

There are no rules governing how the Department must serve a final agency decision. The Department's final agency decision was delivered to both Entera and its outside counsel by Federal Express and was accepted and signed for at both locations. While not a requirement, such delivery is in compliance with SCRCP Rule 4 (d)(9), which provides for service by a commercial delivery service. (R. pp. 24-27). The service of the Department's final agency decision is also in compliance with SCRCP Rule 5(B)(1).

Even though Entera failed to cite any authority to show the Department's service was noncompliant, in the absence of specific parameters, the Department still complied with the rules of civil procedure by having the final agency decision delivered to both Entera and its outside counsel via Federal Express. See SCRCP Rules 4(d)(9), 5(B)(1). Therefore, this Court should uphold the Court of Appeals' decision.

III. The Court of Appeals reached the issue presented in Question I.

The Court of Appeals reached the issue presented above in Question I. The Court of Appeals clearly addressed this question in its Order, which reads in pertinent part:

> 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.

Entera argues that the Court of Appeals reached its opinion by "believ[ing] that because the words 'final agency decision' were capitalized that somehow there [sic] decision became legally correct." While Entera asserts that capitalizing, underlining, and writing in bold letters at the top of the document "FINAL AGENCY DECISION" is insufficient to render the document as such, they simultaneously argue that the phrase "final staff decision" in standard, obscure font, buried in page six of the document is sufficient to conclude that this was not a final agency decision.

Entera's Petition claims that the Court of Appeals failed to reach the issue of whether the Department's letter dated August 21, 2013, constituted a final agency decision but fails to provide citations or supporting authority for this assertion. The Court of Appeals has held that where an appellant fails to cite supporting authority for an assertion and merely makes conclusory statements, the appellant has abandoned the issue on appeal. Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005). This Court has found that where an appellant "fails to provide arguments or supporting authority for his assertion . . . he is deemed to have abandoned [the] issue." First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Entera's

failure to provide any citation or supporting authority for its claim on this issue should be deemed abandonment of the issue and therefore not subject to review by this Court.

As the underlying issues in this action are procedural in posture and were properly addressed by both the ALC and the Court of Appeals, this Court should uphold the Court of Appeals ruling.

CONCLUSION

The decision rendered by the Court of Appeals was unanimous, does not present any novel questions of law, and does not conflict with this Court's prior decisions. The Court of Appeals properly applied all applicable law and affirmed the ALC's dismissal for failure to timely file, finding that the Department properly served its final agency decision on August 21, 2013. The Court of Appeals issued an unpublished decision that will have no binding effect on any other case. Further, the Court of Appeals denied Entera's Petition for Rehearing. This case has been thoroughly considered by the Court of Appeals, and there are no special or important reasons for this Court rehear this case. For these reasons, and those stated in the Department's argument on each issue above, this Court should deny Entera's Petition for a Writ of Certiorari.

Respectfully submitted,

June 25, 2015

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PROOF OF SERVICE

I certify that I have served the **Return to Petition for a Writ of Certiorari** in the above captioned case by depositing copies in the United States Mail, postage prepaid, addressed to the following:

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