

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 20 2016

**SC Court of Appeals**

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APPEAL FROM ADMINISTRATIVE LAW COURT

Hon. John D. McLeod, Administrative Law Judge  
Docket # 16-ALJ-17-0008-CC

\_\_\_\_\_  
Appellate Case No. 2016-000593

\_\_\_\_\_  
Ex Parte: Johnnie Cordero, Appellant,

In Re: Fnu Satish Kumar d/b/a Piney Xpress, Petitioner

v.

South Carolina Department of Revenue, Respondent

\_\_\_\_\_  
PETITIONER'S INITIAL BRIEF

\_\_\_\_\_  
Kenneth E. Allen  
Attorney for the Petitioner  
1201 Main Street, Ste 1980  
Columbia, SC 29201  
(803) 748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)  
SC Bar # 0000335

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## INITIAL ISSUE BEFORE THE COURT

Did the trial judge abuse his discretion in denying Appellant's Motion to Intervene which as offered at trial? And if not, does the Appellant have standing to appeal.

Rule 20 (C) of the Administrative Law Court Rules provides that:

**“Time for Motion for Intervention.** The motion for leave to intervene shall be filed as early in the proceedings as possible to avoid adverse impact on the existing parties or the disposition of the proceedings. Unless otherwise ordered by the administrative law judge, the motion to intervene shall be filed at least twenty (20) days before the hearing. Any later motion shall contain a statement of good cause for the failure to intervene earlier.”

Question One, was the motion filed as early in the proceedings as possible? Clearly not. The Appellant filed his protest with the Department on December 21<sup>st</sup>, 2015.

The record confirms that the requested for a contested case hearing was forwarded to the Court on January 13<sup>th</sup>, 2016 and assigned to Judge McLeod shortly thereafter. At that point in time the motion could have been filed but was not.

Question Two, did Judge McLeod issue any preliminary order related to the filing of motions to intervene? He did not.

Question Three, The rule affirmatively requires a motion to intervene to be filed at least twenty (20) days before the hearing. Was it? No. Here the motion was twenty (20) days late as it was filed the day of the hearing, March 8<sup>th</sup>, 2016.

Question Four, did the motion filed the day of court contain a statement of good cause for failure to intervene earlier? The statement of good cause offered was that Appellant had just learned that the Respondent, South Carolina Department of Revenue was a neutral party and that he, the appellant, would like the right to appeal any adverse decision. The status of the role of the Department of Revenue in this matter was available to the Appellant back in January by way of reasonable inquiry to the Department or by consulting an attorney. Had he availed himself of this opportunity his motion could have been filed much earlier.

Had the appellant consulted the Court's rules or obtained competent legal advice in January or February he would have known he needed to file a motion to intervene then if he want to be able to appeal any adverse decision. Failure to obtain timely legal advice does not constitute "good cause".

The record contains Judge McLeod's standard Order for pre-hearing statements from the parties requesting, among other things, a list of the witnesses they intend to call. Since the Appellant had not previously filed his motion to intervene and had it granted by the Court, he did not receive the Order for pre-hearing statements. Had he timely filed and been a party he would have and would have to provide a list of witnesses he intended to call as well as the other information required by the Court.

A number of non-protestant individuals accompanied the Appellant to the trial. Had the Court granted the Appellant's motion to intervene the Appellant could have started calling these previously unknown individuals to the witness stand.

Question Five Was there an objection to Appellant's motion to intervene? Yes.

Counsel for the Petitioner vigorously objected for the following reasons:

1. The motion could have been filed months before trial.
2. The motion did not comply with the 20 day minimum filing requirement of Rule 20 (C).
3. There was nothing in the "good cause" offered that had not been available for months before trial.
4. Surprise. Granting the motion would allow the Appellant to call previously undisclosed witnesses.
5. Delay. Petitioner would have had to move for a continuance in order to allow time for the Appellant to reply to the Court's pre-hearing Order and to allow time for the Petitioner to take the depositions of witnesses listed in the Appellant's response, all of which would cause an unreasonable delay in a matter that had been pending for months.

APPLICABLE LAW AND CONCLUSION:

The law gives the trial judge broad discretion in these matters. *See S.C. Code Ann 1-23-610(B)*. Here, the trial judge was clearly within his discretion in denying Appellant's motion to intervene. *See S.C. Code 1-23-380 and S.C. Code 12-60-3380. Appellate Court Rule 201 (b) Who May Appeal*. Only a party aggrieved by an order, judgment, sentence or decision may appeal.

Since Appellant is not a party to this case, he lacks standing to appeal.



Kenneth E. Allen  
Attorney for the Petitioner  
1201 Main Street, Ste 1980  
Columbia, SC 29201  
(803) 748-1335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)  
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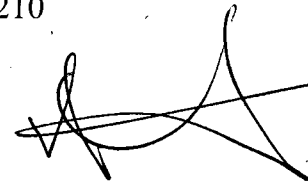
CERTIFICATE OF SERVICE

I, the undersigned Kenneth E. Allen, do hereby certify that I have served a copy of the foregoing Petitioner's Initial Brief in connection with the above-referenced case placing same in the U. S. Mail, postage paid to:

Sarah Khouri, Esquire  
Counsel for Regulatory Litigation  
Post Office Box 12265  
Columbia, South Carolina 29211

Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210  
Appellant Pro Se

June 17, 2016



Kenneth E. Allen  
Attorney for the Petitioner  
1201 Main Street, Ste 1980  
Columbia, SC 29201  
(803) 748-1335, SC Bar # 0000335  
[kallenlaw@sc.rr.com](mailto:kallenlaw@sc.rr.com)

**KENNETH E. ALLEN**  
ATTORNEY AT LAW  
CAPITAL CENTER  
COLUMBIA, SOUTH CAROLINA

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MAILING ADDRESS:  
1201 MAIN ST. STE 1980  
COLUMBIA, S C 29201  
KALLENLAW@SC.RR.COM

TELEPHONE:  
1-803-748-1335  
1-800-858-9237  
FAX 1-803-748-1336

June 17, 2016

Ms. Jenny A. Kitchings, Clerk  
SC Court of Appeals  
1015 Sumter St.  
Columbia, SC 29201

Ref: Ex Parte: Johnnie Cordero, Appellant, Case No. 2016-000593

Fnu Satish Kumar DbA Piney Xpress, Petitioner v  
SC Department of Revenue, Respondent

Dear Madam Clerk:

Enclosed please find the Petitioner's Initial Brief.

Thank you for your attention to this matter.

Sincerely,

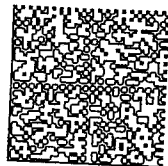
***Ken Allen***


Kenneth E. Allen

cc: Sarah Khouri, Esquire  
Johnnie Cordero, Pro Se

Ken Allen, Attorney  
1201 Main St., Ste 1980  
Columbia, SC 29201

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