

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JUL 27 2016

SC Court of Appeals

Full Commission Decision

Case No. 1320141

Ignacio Rodriguez Respondent,

v.

Robert R. Pierson d/b/a Pierson Construction Co.,
and
ABC Care, Inc.,
and
Property and Casualty Insurance Co. of Hartford,
and the South Carolina Workers' Compensation Uninsured Employers Fund

Of whom Property and Casualty Insurance Co. of Hartford is the.....Appellant.

RESPONDENTS' RESPONSE TO APPELLANT'S MOTION FOR LEAVE TO PRESENT
ADDITIONAL EVIDENCE

Respondents, Ignacio Rodriguez and the South Carolina Uninsured Employers Fund
(UEF) hereby jointly respond to Appellant's Motion for Leave to Present Additional Evidence.

This Motion comes before the court upon the Motion of the Property and Casualty
Insurance Co. of Hartford (The Hartford) based on an Order of the Full South Carolina Workers'
Compensation Commission finding them responsible for benefits to Respondent, Ignacio
Rodriguez, based on an injury which he suffered while employed by ABC Care, Inc. This
Motion should be denied on numerous grounds.

First, it is noted that Appellant is in violation of SCACR Rule 240. Specifically, Appellant has failed to comply with Rule 240 (c) (3). Because there is no record on appeal or appendix, the documents or facts relied on in support of the Motion are not contained in the record and therefore it is incumbent on the Hartford to file affidavits and other documents in support of their position. The Motion received by Respondent, Ignacio Rodriguez, and Respondent, South Carolina Uninsured Employers Fund contains no documents, and on this ground alone, the Motion should be denied.

Second, the Motion in question is governed by South Carolina Workers' Compensation Commission Regulation 67-707. Regulation 67-707 is the Workers' Compensation Commission Rule for admitting additional evidence and the Rule has a number of requirements that are to be complied with *in an appeal to the Full Commission*. See Goodman v. City of Columbia, 318 SC 488 (558) SE2d 530 (1995). (Commission Regulations authorized by legislature have the full force of law).

Respondents, Ignacio Rodriguez and the UEF presume that the Motion involves a document that was attempted to be submitted to the Full Commission in Hartford's trial brief of October 9, 2015. (Exhibits A&B). In that brief, there are two documents designated as "Owner Builder Disclosure Statements". One of these documents has the signature of the Director of Facilities at ABC Care, Inc., Robert Pierson, and the other document has a written statement "ABC Care, Inc. and Director of Facilities". Respondents, Rodriguez, and the UEF would concede that the Full Commission took up Appellant's Motion prior to the oral argument in this matter before the Full Commission and that the attempt by Appellant to enter the new document (Exhibit A) into evidence was denied for failure to comply with Regulation 67-707.

However, Respondents, Rodriguez and the UEF can find no evidence that this was ever placed on a record and there is nothing in the Order of the Full Commission that specifically addresses the Motion. More importantly, Regulation 67-707 (C) (2) has not and cannot be complied with by the Hartford. (C) (2) requires that the evidence sought to be admitted could not have been discovered by reasonable diligence prior to the hearing in the matter. The document which we believe Appellant is seeking to have entered into evidence is date stamped as having been made a part of the public record of Pickens County on October 29, 2013 at 3:24 pm. (Exhibit A) It is noted to have been registered by Paul McGuffin, Register of Deeds of Pickens County, on October 29, 2013. (Exhibit A). This date is before the accident that gives rise to this claim and which occurred on December 23, 2013.

This document is clearly a public record. However, the hearing in this matter was held on January 20, 2015, and the Order issued on July 30, 2015. There is no support, and Appellant cannot reasonably contend, that a due diligence search of Pickens County's records would not have turned up this document which was made a public record some fifteen months prior to the hearing.

Further, the difference between the two documents is completely irrelevant and insubstantial based on the entire reading of the Full Commission's Order. Although there is no record in the appeal at this time, the individual who signed the document, Robert T. Pierson, was the Director of Facilities for ABC Care, Inc. and there is essentially no difference between the two documents because the Order clearly supports that the building permit was issued to Robert Pierson and that Robert Pierson was *indeed* the Director of Facilities of ABC Care, Inc. (Order of the Single Commissioner, Findings of Fact No. 5 & 6; Order of the Full Commission, Finding of Fact No.3, Conclusion of Law No.2).

Third, it is axiomatic that matters not presented below *and* ruled upon by the Commission are not preserved for appeal. Stone v. Roadway Express, 367 SC 575, 627 SE2d 695. Only issues raised and *ruled upon* by the Commissioner are preserved for appeal. See, Stone, 627 SE2d at 698. In this case there is no indication that the Commission ruled upon the issue in question. However, if Appellant was aggrieved by the lack of a ruling on the issue it was incumbent upon the Hartford to file a Motion for reconsideration. Rhame v. Charleston County School District, 412 SC 273, 772 SE2d 159 (2014). It is the responsibility and burden of the Appellant to show that the subject matter of this Motion was properly presented and *ruled upon* by the Commission. Because there is no record, there is no evidence, and there are no affidavits or other documents submitted by the Appellant, the matter is not properly before the Court.

The Motion to add additional evidence should be denied on the following grounds: (1) This matter is not properly before the Court under SCACR Rule 240; (2) That the issue is not preserved for appeal and should have been *ruled upon* by the Full Commission and/or Appellant should have filed a Motion for Reconsideration; (3) Pursuant to Regulation 67-707 the Appellant cannot meet its burden of showing that the matter could not have been discovered upon due diligence, because the document in question is a public record.



David Hill Keller, Esq.
Attorney for SC Uninsured Employers Fund
TURNER PADGET GRAHAM & LANEY, P.A.
P.O. Box 1509
Greenville, SC 29602
864-552-4622

Respectfully Submitted,



William H. Ehli, Esq.
Attorney for Ignacio Rodriguez
310 Mills Avenue, Suite 201
Greenville, SC 29605
864-232-3503

EXHIBIT A

Pickens County Building Codes
222 McDaniel Ave., B-10, Pickens SC 29671
Telephone (864) 898-5950 Fax (864) 898-5580

Owner Builder Disclosure Statement

The Building Codes Department under the authority of the Codes of Laws of the State of South Carolina, 1976, as amended Title 40, Chapter 59, Article 1, Section 40-59-260, is providing the undersigned owner builder this disclosure statement.

State law requires residential construction to be done by licensed residential builders and specialty contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence. The building must be for your own use and occupancy. It may not be built for the sale or rent. If you sell or rent a building you have built yourself within two years after the construction is complete, the law will prohibit that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable laws, ordinances, zoning regulations and are subject to all applicable building conditions during construction as required by adopted building codes.

If the residential building or structure has been constructed by an owner under the exemption provided for in this section, the owner of the residential building or structure must promptly file, as a matter of public record, a notice with the register of deeds, indexed under the owner's name in the grantor's index, stating that the residential building or structure was constructed by the owner as an unlicensed builder. Failure to do so revokes the exemption.

Address: 149 Lake Wood Ln. Sunset, SC 29685
Tax Map Number: 66-4132-01-06-8130
Owner Builder(s): [Signature]
Printed Name(s): Robert T. Person
Witness 1: [Signature] Witness 2: [Signature]

State of South Carolina
County of Pickens
The foregoing instrument was acknowledged before me this date 29th Oct., 2013
By: [Signature] (name of person acknowledged)

Sworn and subscribed before me this 29th day of Oct., 2013

[Signature] (SEAL)
Notary Public for South Carolina
My commission Expires: 1-24-23

FILING FEE: \$10.00

EXHIBIT B

Pickens County Building Codes
222 McDaniel Ave., B-10, Pickens SC 29671
Telephone (864) 898-5950 Fax (864) 898-5580

Owner Builder Disclosure Statement

The Building Codes Department under the authority of the Codes of Laws of the State of South Carolina, 1976, as amended Title 40, Chapter 59, Article 1, Section 40-59-260, is providing the undersigned owner builder this disclosure statement.

State law requires residential construction to be done by licensed residential builders and specialty contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence. The building must be for your own use and occupancy. It may not be built for the sale or rent. If you sell or rent a building you have built yourself within two years after the construction is complete, the law will presume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. **Your construction must comply with all applicable laws, ordinances, zoning regulations and are subject to all applicable building inspections during construction as required by adopted building codes.**

If the residential building or structure has been constructed by an owner under the exemption provided for in this section, the owner of the residential building or structure must promptly file, as a matter of public record, a notice with the register of deeds, indexed under the owner's name in the grantor's index, stating that the residential building or structure was constructed by the owner as an unlicensed builder. Failure to do so revokes the exemption.

Address: 149 Lake Wood Ln. Sunset, SC 29685
Tax Map Number: plc 432-01-06-8130
Owner Builder(s): ABC Corp INC
Printed Name(s): Robert T. Person Director of Building
Witness 1: [Signature] Witness 2: [Signature]

State of South Carolina

County of Pickens

The foregoing instrument was acknowledged before me this date 29th Oct, 2013
By [Signature] (name of person acknowledged)

Sworn and subscribed before me this 29th day of Oct., 2013

[Signature] (SEAL)

Notary Public for South Carolina

My commission Expires: 1-24-23

FILING FEE: \$10.00

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Of whom Property and Casualty Insurance Co. of Hartford is the.....Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Respondents' Response to Appellant's Motion for Leave to Present Additional Evidence in the above referenced case has been served on all parties of record by mailing a copy of the same in the United States mail, postage prepaid this 25th day of July, 2016, addressed as follows:

David M. Padgett, Esq.
HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC
1204 A East Washington Street
Greenville, SC 29601
Attorney for Property and Casualty Company of Hartford

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Attorney for Robert T. Pierson, d/b/a Pierson Construction and ABC Care, Inc.

Sally Drawdy

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Paralegal to David Hill Keller

Turner Padgett Graham & Laney, P.A.

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David H. Keller

REPLY TO:

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July 25, 2016

RECEIVED

Honorable Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

JUL 27 2016

SC Court of Appeals

RE: Ignacio Rodriguez v. Robert T. Pierson d/b/a Robert Pierson Construction Co. et al. and the South Carolina Uninsured Employers Fund
Appeal from the South Carolina Workers' Compensation Commission
Case No. 1320141

Dear Ms. Kitchings:

Enclosed is an original and six (6) copies of Respondents' Response to Appellant's Motion for Leave to Present Additional Evidence with regards to the above-referenced matter.

Yours truly,

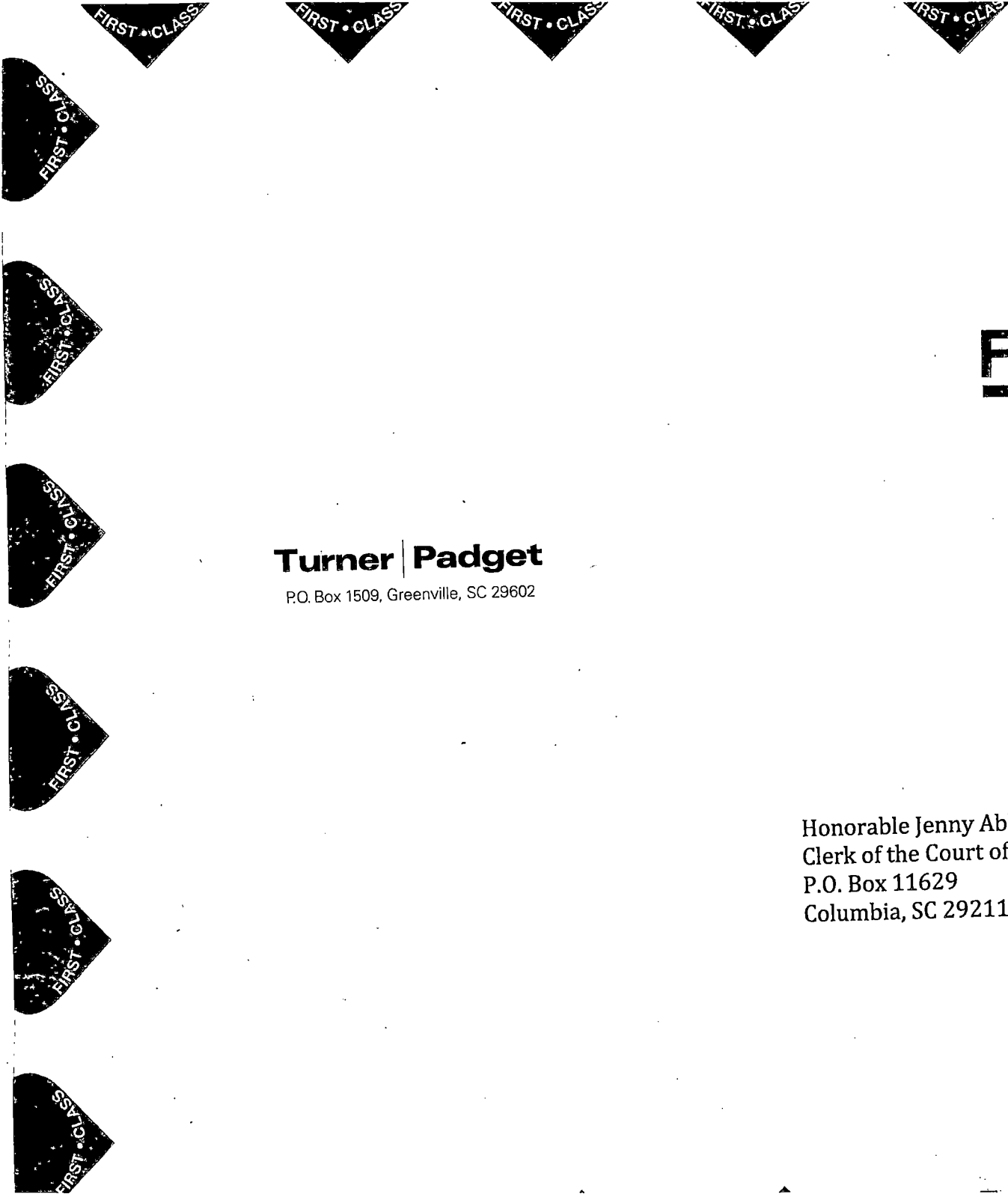
TURNER PADGET GRAHAM & LANEY P.A.



David H. Keller

DHK/sbd
Enclosures

cc: William H. Ehlies, Esq.
Randall S. Hiller, Esq.
David M. Padgett, Esq.
South Carolina Workers' Compensation Commission



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07/25/2016
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Turner | Padgett
P.O. Box 1509, Greenville, SC 29602

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