

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

N. Bobby Knight and Construction Group,)
LLC,)

Appellants,)

v.)

South Carolina Department of Labor,)
Licensing and Regulation, South Carolina)
Contractor's Licensing Board,)

Respondent.)

Docket No. 16-ALJ-11-0467-AP

ORDER OF DISMISSAL

RECEIVED

JUN 08 2017

SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (ALC or Court) on a Motion to Dismiss filed by the South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board (Department). The Department requests that the appeal filed by Appellant N. Bobby Knight (Knight) on behalf of himself and Appellant Construction Group, LLC (LLC) (collectively, Appellants) be dismissed because Appellants failed to retain counsel to represent the LLC before proceeding with the appeal and neither appeared at the hearings below.

On January 4, 2017, the Court mailed a letter to Mr. Knight informing him that he could not represent the LLC in his personal capacity pursuant to Rule 8(A) of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and that he was required to retain counsel to continue with the appeal. The Court not only explained SCALC Rule 8(A) in that letter but also provided Mr. Knight with an attached copy of the rule.

On January 16, 2017, Mr. Knight filed a Motion to Correct or Amend Caption and a Motion for Stay in violation of the law. On February 6, 2017, the Court issued an Order denying Mr. Knight's motions and granting the Department's request for an extension of time to file the Record on Appeal. In this Order, the Court found that this appeal must proceed with the LLC as an appellant and not just Mr. Knight because "[t]his appeal pertains to not only sanctions against the qualified party certificate issued to Mr. Knight and fines imposed upon him, but also to the sanctions imposed against the license issued to Construction Group, LLC and the fines imposed

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May 4, 2017

SC ADMIN. LAW COURT

upon it.” As such, the Court also found that SCALC Rule 8(A) applied to the LLC, thus again requiring it to retain counsel. The Court plainly stated the following in the Order: **“an attorney can and must be represent an LLC before this Court. Otherwise, the Court will not entertain any arguments on its behalf.”** (Emphasis added). Also, in granting the Department’s request for extension of time to file the Record on Appeal, the Court again stated its finding that **“Appellant LLC has thus far failed to comply with SCALC Rule 8(A) and must, therefore, retain counsel if it wishes to proceed on the appeal”** (Emphasis added).

On February 24, 2017, the Department filed the Record on Appeal. On March 24, 2017, Mr. Knight filed a brief on behalf of himself and the LLC despite the Court’s February 6, 2017 Order requiring Appellants to retain counsel, again in violation of the law. The Department then filed its Motion to Dismiss on April 18, 2017. On April 27, 2017, Mr. Knight filed a “Response of Appellant to: (sic) Respondent’s Motion to Dismiss.” In “Appellant’s Note No. 2” in his brief, Mr. Knight explains why Appellants failed to comply with the Court’s directive:

The question as to SC-ALC Rule 8A that Construction Group, LLC must hire an attorney to be heard &c. that Appellant Knight would have the money to hire some attorney for this business had the copper not been admittedly stolen by SCLLR-CLB Board Member Legrand Richardson, Jr. -- which is a **paradox** as [i]f (sic) Richardson, Jr., as owner of Atlantic Electric, had not stolen the copper in the first place - then - most likely this contract dispute would not now be ongoing since February 2011. AS (sic) of ‘*court like*’ administrative law is entitled to judicial review, yet attorneys are not required for Construction Group LLC - then the Formal Complaint process warrants a Summons to attach Personal Jurisdiction to this non-separable (sic) matter. Construction Group LLC has become a frozen entity since the theft and fraud at the District Court by Atlantic and its attorneys. The terms of the federal contract follow the federal contract: See[.] (sic).

In his Reply to the Department’s Motion, Mr. Knight also argues, *inter alia*, that he did not have to retain counsel because he is “winding up” the LLC, and he cites to S.C. Code Ann. 33-44-803(c) (2006) to support this contention.¹ However, though this provision allows “[a] person winding up a limited liability company business . . . [to] prosecute and defend [administrative] actions and

¹ Mr. Knight attached to his Reply an original copy of the “Articles of Termination Form” form from the South Carolina Secretary of State’s Office. However, there is nothing on this form or anywhere else to indicate that this document was actually filed with the Secretary of State’s Office. Indeed, according to the Secretary of State’s website, the last filing for the LLC occurred on 04/27/2004, and the “Dissolved Date” is “N/A.” See <https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/750e4343-e8eb-44ed-ba60-b7f1a7b1ebeb> (last visited May 2, 2017).

proceedings” involving the company, this does not obviate Mr. Knight’ responsibility to retain counsel for the LLC. Rather, this provision simply authorizes Mr. Knight to act on behalf of the LLC in prosecuting and defending administrative actions and proceedings by retaining counsel to represent the LLC in such actions. As the Court informed Appellants in the January 4, 2017 letter to Mr. Knight and in the Court’s February 6, 2017 Order, SCALC Rule 8(A) provides in pertinent part that “[a]ny party which is not a natural person must be represented by an attorney.” Notes to the 2016 Amendments for SCALC Rule 8 adds that “Rule 8(A) has been amended to clarify that any party which is not a natural person, such as corporations, partnerships, and other business entities, must be represented by an attorney in proceedings before the Court.” As the Court also explained in its February 6, 2017 Order, “an LLC qualifies as an ‘other business entit[y]’ for purposes of SCALC Rule 8(A).” Furthermore, the South Carolina Supreme Court, which has the constitutional duty to regulate the practice of law in South Carolina, has held that “a corporation may appear *pro se* only in magistrate’s court.” See *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 653, 515 S.E.2d 257, 259 (1999).

Here, Mr. Knight filed a brief for himself and the LLC in his personal capacity after receiving repeated admonitions from the Court to comply with its rules and retain counsel for the LLC. As such, the appeal as to the LLC is void *ab initio*. Consequently, this Court has no jurisdiction to hear the LLC’s appeal and must dismiss it. *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”); *contra Brown v. Coe*, 365 S.C. 137, 616 S.E.2d 705 (2005) (allowing a *pro se* appellant who was not authorized to file a notice of appeal an opportunity to retain counsel to continue with the appeal, **but also stating it would dismiss the appeal if counsel was not retained within the time allotted in the Court’s order**), *clarified in Brown v. Coe*, 365 S.C. 664, 620 S.E.2d 323 (2005). Moreover, even though Mr. Knight claims that he is in the process of “winding up” the LLC, and even if the LLC were dissolved, this would, at best, render the LLC’s appeal moot and thus would still result in its dismissal.²

² In addition, even if Mr. Knight dissolves the LLC, the fine that the Department imposed on the LLC will still be a liability that Mr. Knight will have to discharge pursuant to S.C. Code Ann. § 33-44-803 (2006).

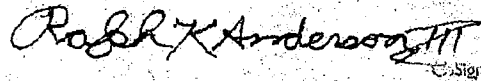
But even had the LLC retained counsel for its appeal to the ALC, the Court would still dismiss the LLC's appeal because counsel did not appear on its behalf both before the hearing officer and at the Final Order Hearing despite the LLC being properly notified of both hearings. For the same reason, the Court must also dismiss Mr. Knight's appeal, as he also failed to appear before both the hearing officer and at the Final Order Hearing.³ Consequently, all of the arguments that Mr. Knight now raises in his brief are being raised for the first time on appeal and, as such, cannot be considered by this Court. *See Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [fact finder] to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)); *see also Burton, supra* ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.")⁴

³ In both his brief and in his Reply to the Department's Motion to Dismiss, Mr. Knight argues that he was never given notice of the hearings below because they were "mailed to 108 Wilson St., Summerville and this is not the mailing address of Bobby Knight." However, the hearing officer stated in his order that he "determined that there was proper service of the Notice of Hearing and Formal Complaint to the Respondents at the address of record . . ." Also, even assuming that Mr. Knight did not reside at the 108 Wilson St. mailing address at the time that the notices were served, he still had the duty to inform the Department of any address changes, which he apparently understood at the time that he completed the "2016-2018 General Contractor's Renewal Form" on December 1, 2016 because that form lists his current mailing address for both himself and the LLC. Mr. Knight complete this form almost a month after the Final Order from Board was mailed. Moreover, based on the mailing addresses cited in the certificate of service for the Board's Final Order, which were presumably the same as those used to send the notices for the hearings, the Department had served the notices for the hearings not only to Mr. Knight at the 108 Wilson St. Address but also to the LLC at 3940 Hottinger Avenue, N. Charleston, SC 29405, which is the same address that Appellants have on file with this Court. Therefore, Mr. Knight is without excuse for not responding to the notices sent. But even if the mailing addresses used to send Mr. Knight and the LLC the notices were different than those used to send the decisions, because the Final Order was sent to Mr. Knight's and the LLC's current address at 3940 Hottinger Avenue, Mr. Knight had notice that a hearing had taken place and could have filed a Motion to Reopen based on a lack of notice. Because Appellants did not notify the Board of a lack of notice, that issue is not preserved for appeal.

⁴ The Court also has no record of a Notice of Appearance filed by an attorney in this case, which is required pursuant to SCALC Rule 8(B) ("After a case is assigned to an administrative law judge, an attorney or other person authorized to represent a party pursuant to this rule **must** file a notice of appearance with the presiding administrative law judge within ten days of being retained or authorized to represent the party.") (emphasis added). And even had the LLC retained counsel, and that attorney had filed a Notice of Appearance, the LLC's brief was filed by Knight, who is not an attorney, and would thus, at best, be engaging in "hybrid" representation, which is invalid. *See State v. Stuckey*, 333 S.C. 56, 58, 508 S.E.2d 564, 564 (1998) (holding that because "there is no [constitutional] right to hybrid representation, substantive documents filed *pro se* by a person represented by counsel are not accepted unless submitted by counsel."). Therefore, the Court would still dismiss the LLC's appeal even had it retained counsel at the time it appealed to the ALC.

IT IS THEREFORE ORDERED that Appellants' appeal is **DISMISSED WITH PREJUDICE.**⁵

AND IT IS SO ORDERED.



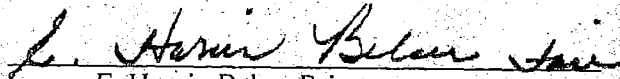
Ralph King Anderson, III
Chief Administrative Law Judge

May 4, 2017
Columbia, South Carolina

⁵ As a final note, the Court points out to Mr. Knight that by disregarding the Court's warnings and proceeding to file a brief and a Reply to the Department's Motion to Dismiss on behalf of the LLC in this case, he has engaged in the unauthorized practice of law, which is a **felony** in South Carolina. See S.C. Code Ann. § 40-5-310 (2011).

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

May 4, 2017
Columbia, South Carolina

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