

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 11-ALJ-17-0129-CC

South Carolina Department of Revenue,

v.

Newberry Lodge No. 2211, Loyal Order of Moose,
d/b/a Moose Lodge 2211,

RECEIVED
Respondent,
DEC 03 2012

SC Court of Appeals
Appellant.

**APPELLANT'S REPLY TO RESPONDENT'S RETURN
TO APPELLANT'S MOTION FOR LEAVE TO MOVE
FOR RELIEF FROM JUDGMENT**

Appellant, Newberry Lodge 2211, Loyal Order of Moose, d/b/a Moose Lodge 2211, submits this Reply to Respondents Return to Appellant's Motion for Leave to Move for Relief from Judgment. For the reasons set forth herein, Respondent's arguments in opposition to Appellant's motion are without merit.

ARGUMENT

Respondent devotes most, if not all, of its return arguing that Appellant is not entitled to relief from the the order of the Honorable Carolyn C. Matthews dated October 20, 2011 (the "ALC order"). As a general matter, this Court should note that Appellant is simply asking for leave (or remand) in accordance with Rule 60, South Carolina Rules of Civil Procedure ("SCRCP") to have its

motion for relief from such order heard in the lower court. Appellant's motion does not seek a ruling on whether Appellant is entitled to relief from the ALC Order. Therefore, that question is not before the Court. Nevertheless, Appellant will address each of Respondent's arguments in the order presented in its return. Appellant will not, however, restate the facts and arguments set forth in its motion, the contents of which are incorporated by reference as if set forth herein verbatim.

I. Rule 60 Specifically Addresses A Request For Relief From Judgment After An Appeal Has Been Taken.

Respondent argues that Appellant is, by its Motion to Relieve to Move for Relief from Judgment, attempting to make new arguments which were not presented to the ALC, and are "in blatant" disregard of the rules of procedure. Neither assertion is true.

Rule 60, SCRCPC, provides that leave from the Appellate Court is required "during the dependency of an appeal", which is precisely the relief sought by Appellant's motion presently before this Court. Therefore, it is difficult to understand how Appellant is attempting to make arguments not made to the lower court by seeking leave or remand from this court for the express purpose of making its motion to the ALC. It is just as inconceivable that Appellant is "blatantly disregarding the rules of procedure" where such rules specifically address the precise circumstances presented in the motion before this Court. To accept Respondent's view would be to write Rule 60 right out of the rules of civil procedure, particularly those provisions of the rule which address its operation during dependency of an appeal.

As is the case with most of Respondent's arguments, Respondent is engaging in legal projection – defined as a defense mechanism whereby one denies his or her own motivations, which are then ascribed to the opposing party. It is Respondent's arguments which disregard Rule 60,

SCRCP, whereas, by its motion, Appellant seeks to comply with it.

II. There Is No Authority Which Provides That A Rule 60 Motion Cannot Be Made Where A Motion To Reconsider Has Previously Been Filed.

Respondent ostensibly argues in its return to Appellant's motion that a party may not make a motion for relief from judgment merely because such party has previously filed a motion to reconsider on other grounds pursuant to Rule 59, SCRCP. The undersigned is unable to find any authority for this assertion. Tellingly, Respondent does not cite any such authority. Instead, the Respondent admits that relief from judgment may be had in certain circumstances under Rule 60, SCRCP. Again, it is incomprehensible how Appellant, by simply filing its motion, is blatantly disregarding "the rules of appellate practice and civil procedure". One would assume that if Appellant's motion is so patently in disregard of such rules, Respondent would have cited some authority to that effect. It did not. The fact is Rule 60 specifically addresses the circumstances presented by Appellant's motion.

Accordingly, there is no prohibition against making a Rule 60 motion following the denial of a motion to reconsider under Rule 59, SCRCP, and Appellant is entitled to leave from this Court to make its arguments before the ALC.

III. Respondent's Arguments Regarding The Purpose of the Reference To The Consent Agreement In The ALC Order Is Utterly Without Merit.

Respondent argues in its return that Appellant misunderstands the reasons why the ALC Order references the 2008 Consent Agreement. Respondent states that the ALC Order does not reference the Consent Agreement for purposes of determining the length of the revocation; rather it does so for purposes of determining the appropriateness of the penalty sought by the department. This is a distinction without a difference.

First and foremost, the ALC is in the best position to state its reasoning for referencing the Consent Agreement. If Respondent's assertions regarding the ALC's reasoning are correct, Appellant is entitled to have the ALC say so, which requires leave from this Court as sought in Appellant's motion. Secondly, if the ALC did not reference the Consent Agreement for purposes of determining the length of the revocation, then one wonders why the ALC went so far as to determine the length of the revocation in the first place, particularly considering there is no other reference to the length of the revocation appearing in the record below. The fact is the ALC's order is clear. It references the Consent Agreement as requiring the three year revocation penalty imposed.

Furthermore, the transcript of the hearing preceding the ALC Order shows that there was no discussion of a three year revocation at all.¹ There is discussion regarding a revocation in general, but none regarding the length of the revocation. It is evident, therefore, that the notion of a three year revocation from "the date of [the] final determination" by the magistrate was presented for the first time to the ALC in the order drafted by Respondent.

The Appellant is informed and believes that the ALC thought the penalty provided in her order was required by the Consent Agreement. Otherwise, there was nothing in the record to substantiate the actual penalty imposed. Moreover, given the fact that Respondent likewise "freely and consciously agreed" to the provisions of the Consent Agreement, it should not be allowed to seek any penalty beyond that provided therein. Appellant is informed and believes that it is entitled to the relief requested in its motion in order to allow the ALC to settle the question regarding the reasoning behind the order's reference to the Consent Agreement.

¹ A copy of the hearing transcript is attached as Exhibit A.

IV. The Deviation Of the ALC Order From The Consent Agreement Is A Clerical Error Which May Be Corrected Under Rule 60(a), SCRCP.

Respondent, in its return to Appellant's motion, argues that the deviation of the ALC Order from the terms of the Consent Agreement is not a clerical error contemplated by Rule 60(a), SCRCP. As set forth in Appellant's motion, Appellant believes that such inconsistency is the result of one of two things: (1) an honest mistake by Respondent in drafting the order for the ALC; or, (2) a knowing misrepresentation of the appropriate penalty in a deliberate effort to mislead the lower court.

Despite the contents of Respondent's return, Appellant still believes an honest mistake is at fault in this case. Given the amount of space devoted to discussion of the "final determination" of illegality by the magistrate in the ALC Order, Appellant believes counsel for Respondent (and Appellant for that matter) simply did not catch the error. In that event, the incongruity between the Order and the Consent Agreement is a clerical error which may be corrected under Rule 60(a), SCRCP.

Respondent cites the case of Brown v. Brown, 392 S.C. 615, 709 SE 2nd S.C. 679 (Ct. App. 2011) for the proposition that the divergence of the ALC Order from the Consent Agreement is not correctable as a clerical error under Rule 60(a), SCRCP, because to do so would "change the scope of the judgment." Respondent's reliance on Brown is misplaced.

In Brown, this Court held that the Family Court could not "clarify" a divorce decree under Rule 60(a), SCRCP, to provide that the husband's equitable share of the marital home was an interest-accruing money judgment. There, the original divorce decree recited that the husband had an equitable share of the marital home valued at \$60,191.02. The Family Court later determined that the terms of the divorce decree addressing the husband's equity in the home were ambiguous and required further construction. Based on this finding, the Family Court issued an order "purportedly

clarifying the divorce decree to award the husband post-judgment interest” on the his equitable share of the marital home pursuant to Rule 60(a), SCRCP. Id. The Brown Court rightly held that the Family Court’s “clarification” of the divorce decree amounted to more than the mere correction 6 the clerical error. Id. On the contrary, this Court found that the “clarification” re-characterized a portion of the husband’s award and imposed additional terms upon the parties that did not exist at the time the divorce decree was entered.

Here, correcting the ALC Order to conform to the Consent Agreement would not affect a change in the scope of the judgment. The ALC Order would still find Appellant violated S.C. Code Ann. ' 61-4-580 and impose the penalty of revocation. A correction would not re-characterize the prior judgment or impose additional terms upon the parties. Contrary to Respondent’s assertion, comparing Brown to the facts of this case in fact lends more support to Appellant’s position.

Respondent also cites Michel v. Michel 289 S.C. 187, 345 S.E. 2nd 730 (Ct. App. 1986), in support of its argument that a correction of the ALC order would “change the scope of the judgment.” There, this Court held the Family Court did not have the authority under Rule 60(a), SCRCP, to vacate a previous order approving a property settlement agreement and replacing it with an order disapproving the agreement. This Court rightly held that to do so would amount to a change in the scope of the previous judgment. Id.

Michel is clearly distinguishable from the case at bar. Appellant’s motion for relief from judgment does not ask the ALC to now declare there was no violation or that revocation is an inappropriate penalty. That would be a change in the scope of judgment. However, the correction sought by Appellant would simply make the penalty imposed conform to the penalty provided in the parties Consent Agreement. Such a correction involves no exercise of any judicial function. As with

Brown, Respondent's reliance on Michel is mislaid.

Accordingly, for the reasons set forth in Appellant's motion and those provided herein, the error alleged in the ALC Order is a clerical error from which relief maybe had under Rule 60(a), SCRPC, and Appellant is entitled to leave from this Court (or remand) in order to make such motion before the lower Court.

V. Appellant Filed Its Motion Within A Reasonable Time And Has Made A Showing Of The Meritorious Defense.

Respondent goes on to argue in its return that the relief sought by Appellant should be denied because the motion was not filed within a reasonable time as required by Rule 60, SCRPC. This is demonstratively false.

Appellant filed its motion for relief from judgment in the lower court on October 15, 2012, within the one year time limit provided for motions seeking relief under Rule 60(b)(1)-(3), provides SCRPC. Rule 60, SCRPC, that such motions must be filed within "a reasonable time". The Rule then immediately thereafter states "for reasons (1), (2), and (3) not more than one year" after the entry of the order or judgment. As a result, it is clear that all other Rule 60 motions are specifically excluded from the one year limitation, and consequently may be made outside of a year of the order. See, Mr. T v. Ms. T, 378 S.C. 127, 662 S.E.2nd 413 (Ct. App. 2008). Therefore, having filed its motion less than a year from the entry of the ALC Order, Appellant's motion complies with Rule 60, SCRPC.

Respondent further argues that Appellant has failed to establish a meritorious defense.² This, again, is patently false. Respondent drafted the Consent Agreement. Therefore, it knowingly and

² Appellant is informed and believes that a showing of a meritorious defense is only required when seeking relief from a default judgment. See, *e.g.*, Tri-County Ice and Fuel v. Palmetto Ice, 303 S.C. 237, 339 S.E. 2nd

freely agreed that the penalty for a violation of the agreement would be three years “from the date of the violation resulting in such revocation.”

Appellant simply seeks to have the ALC Order corrected to conform with the very Consent Agreement that Respondent has pointed to as justification for the penalty imposed throughout this litigation. Respondent admits that it is bound to the Consent Agreement, but seeks to avoid its terms. Neither law nor equity support Respondent in this effort. If corrected, the effect of the revocation of Appellant’s license would cease after February 9, 2013. In that case, Appellant would dismiss this appeal. Consequently, the Appellant’s defense in this regard is more than meritorious; it is outcome determinative.

Therefore, Appellant has filed its motion within the time limits provided under Rule 60, SCRCP, has established a meritorious defense, and is entitled to the relief sought by its motion.

VI. If It Is Not The Result Of A Mistake, The Penalty Provided In The ALC Order Must Be The Result Of A Fraud Perpetrated Upon The Court.

Contrary to Respondent’s assertion that Appellant has repeatedly accused the “Department” misrepresenting the length of the revocation to the ALC, Appellant has gone out of its way to make clear that Appellant believes that the discrepancy between the ALC Order and the Consent Agreement is the result of an honest mistake. However, if Respondent denies the mistake, as it apparently does, there is but one conclusion: there was a deliberate effort to mislead the lower court to imposing a penalty greater than that to which Respondent was entitled under the consent agreement. Again, there was no discussion of the length of the revocation at the hearing preceding the ALC’s order. However, the notion of the revocation operating for three years “from the date of {the} final determination” of illegality by the magistrate did not come out of thin air. It certainly did

not come from Appellant. So, if it is not a mistake, given the clear and unambiguous terms of the Consent Agreement³, it could only have been a knowing misrepresentation of the appropriate penalty to the lower court. It's as simple as that.

Respondent argues in its Return to Appellant's Motion that to the extent the discrepancy between the ALC Order and the Consent Agreement is determined to be the result of fraud, such fraud would be intrinsic in nature, and, therefore, no relief would be available under Rule 60(b)(3), SCRPC. This is clearly false. As set forth in Appellant's motion, the power to vacate a judgment that has been obtained by fraud from the Court is inherent in the Courts. Chewning v. Ford Motor Co. 346 S.C. 228, 550 S.E. 2nd 584 (Ct. App. 2001). This is not a case, such as those cited by Respondent, involving fraud or perjury by a party. Instead, where Respondent denies a drafting error or other mistake, this case involves a deliberate effort on the part of counsel for Respondent to mislead the Court into imposing a penalty greater than that required by the Consent Agreement, which is the very category of misconduct this Court sought to address in Chewning. This Court's specifically held in Chewning that where a fraud upon the court has occurred, it is error to apply the law of extrinsic and intrinsic fraud. Id. This Court went so far as to say that, under Rule 60, a party may seek to set aside a final judgment for fraud upon the court, and that this right is independent of Rule 60(b)(3). Id. Respondent's arguments in this regard are therefore without merit.

Respondent also asserts that Appellant is not entitled to leave or remand because it has failed to offer clear and convincing evidence to this Court to support its allegation of fraud. Again, where Respondent denies a drafting error or other mistake, the fraud is *ipso facto*. In any event, Appellant does not seek relief from the ALC order from this Court; instead, Appellant seeks only leave

³ This Court should note that the Respondent does not even attempt to disagree with Appellant's construction

and/or remand to the lower court in order to seek such relief. Under Rule 60, SCRCP, it is in the lower court where Appellant must make the required showing.

VII. Finally, It Is Inequitable For The ALC Order To Continue To Operate Prospectively.

In order to avoid explaining why it is equitable for Respondent to avoid the terms of its own agreement, Respondent argues that the ALC Order does not have prospective application. This is false. The ALC order, on its face, is prospective in nature. It provides that the revocation imposed “shall maintain in effect for three years from the date of [the] final determination” of the legality of the machine by the magistrate - an event which had not occurred when the order was entered. The order operates to effectively prevent Appellant from making a new application for a beer and liquor license and permit during that time period. Therefore, it is clear that the order is prospective in nature. It is absurd to argue otherwise.

Under the ALC order, the revocation of Appellant’s license and permit remains in effect until after December 16, 2014. If corrected, it remains in effect until after February 9, 2013 – a nearly two year difference. Therefore, this is not a small point, especially to Appellant, a non-profit charitable organization that earns its funds virtually exclusively from the sale of alcohol. For Appellant, these two additional years will likely result in its dissolution. Again, it is the Appellant’s position that the lower court believed the penalty imposed by her order was required by the Consent Agreement. In these circumstances, the terms of the agreement should be enforced in the same manner Respondent seeks to enforce the remainder of the agreement against Appellant. As an equitable matter, this is not even arguable.

Finally, Respondent has argued in its brief to this Court that the current appeal is

of the Consent Agreement.

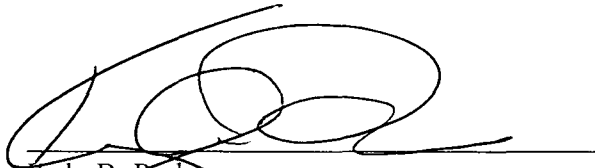
interlocutory, and, therefore, the ALC Order is not immediately appealable. Respondent is wrong, but is now stuck with that position. Assuming arguendo that Respondent is right, this appeal would be dismissed and Appellant would not, therefore, need leave from this Court to argue its motion in this regard. The point is: one way or another, Appellant will have its motion heard, which, given the facts underlying the motion, is something Respondent desperately seeks to avoid.

CONCLUSION

The Respondent's Return to Appellant's motion is unpersuasive and without merit. Appellant's motion does not seek to disregard the rules of procedure, but, instead, seeks to comply with them. There is no question the penalty imposed by the ALC Order is in stark contrast to the penalty provided in the Consent Agreement. Respondent does not even argue to the contrary. Rather, it admits it is bound to the agreement, yet seeks to circumvent it. It is clear the ALC's order's deviation from the agreement is the result of either a mistake or a deliberate effort to mislead the Court regarding the appropriate penalty in this case. In either case, Appellant is entitled to a correction of the order to conform to the agreement. For the reason set forth in the motion, in addition to those set forth herein, Appellant is entitled to leave and/or remand from this Court to seek such correction in the lower court.

Again, in the event the ALC Order is corrected, Appellant will not continue its pursuit of this appeal.

(SIGNATURE APPEARS ON FOLLOWING PAGE)



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 11-ALJ-17-0129-CC

South Carolina Department of
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v.

Newberry Lodge Number 2211, Royal
Order of Moose, d/b/a Moose Lodge
2211,

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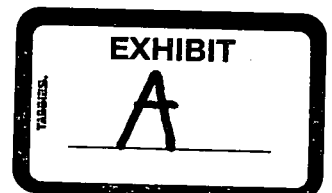
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MOTIONS HEARING

Monday, September 19, 2011
1:59 p.m. - 2:52 p.m.

The hearing before the Honorable Carolyn C. Matthews, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 19th day of September 2011, before Diane M. Hendricks, Court Reporter and Notary Public in and for the State of South Carolina.

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EXHIBITS

(There were no exhibits appended to this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

1 **THE COURT:** Good afternoon to everyone. I'm Judge
2 Carolyn Matthews, and I'm the Administrative
3 Law Judge that's been assigned to hear the case
4 before me, which is South Carolina Department
5 of Revenue, Petitioner, versus Newberry Lodge
6 Number 2211, Loyal Order of Moose doing
7 business as Moose Lodge 2211, Respondent. It's
8 our Docket Number 11-ALJ-17-0129-CC. And for
9 the Department of Revenue we have Mr. J.
10 Abraham Gutting as well.

11 **MR. GUTTING:** Good afternoon, Your Honor.

12 **THE COURT:** And for the Respondent, the Newberry
13 Lodge, we have Mr. G. Reid Quattlebaum, Jr.

14 **MR. QUATTLEBAUM:** Good afternoon, Your Honor.

15 **THE COURT:** Good afternoon, Mr. Quattlebaum. And
16 before me today I have several motions dealing
17 with this case. Everything from a motion to
18 quash, a subpoena issued to Mr. Wes Bickley of
19 SLED, to South Carolina Department of Revenue
20 motion for summary judgment. It began with a
21 motion to dismiss by the Newberry Lodge
22 contending that there was no jurisdiction over
23 this case because it should properly -- or
24 hasn't been properly disposed of at the
25 magistrate's level yet. And I will say this

1 case -- the procedural posture is a little
2 confusing to me, because I've had one case like
3 this before where Dick Harpootlian and Dwight
4 Drake were involved in it, and somehow we were
5 going -- we held it in abeyance hinting the
6 outcome of what was going on at the
7 magistrate's level. And they settled it
8 somehow. So I never really heard what went on
9 and who shot whom. So perhaps either Mr.
10 Gutting or Mr. Quattlebaum, you can enlighten
11 me as to exactly -- if you know where this case
12 is right now at the magistrate's level.

13 **MR. GUTTING:** Thank you, Your Honor. Abe Gutting
14 for the Department of Revenue. As far as where
15 the case is before the magistrate's court, I
16 will actually defer to Mr. Quattlebaum. He was
17 the one who represented during the scheduling
18 hearing date, and they ended up requesting a
19 procedure hearing, so I'll defer to him.

20 **THE COURT:** All right. I'm trying to think what
21 order is the best to take these in. And I
22 guess -- well, if I would grant the motion for
23 summary judgment, obviously, that would be
24 dispositive of the whole issue. So I guess the
25 logic is to do that one first, and then if I do

1 deny that, then we'll look at the motion to
2 quash and any of the other procedural motions.
3 Does that work for everyone?

4 **MR. GUTTING:** Your Honor, if I may -- and it may be
5 confusion on my part, so I do apologize. The
6 motion to dismiss was never ruled on. We held
7 the hearing on the matter in abeyance so that
8 the Respondent could go to the magistrate's
9 court, and also so the parties could conduct
10 discovery. So with that being said, I would
11 ask that either Mr. Quattlebaum is the motion
12 to dismiss abandoned or has the court ruled on
13 it, or are we here today -- I'm under the
14 impression that we're here today to appeal that
15 motion. But I could be mistaken.

16 **THE COURT:** No. I mean, obviously, that motion is
17 the threshold one. And -- but the reason to
18 dismiss, as I understand it, is that we don't
19 have such a jurisdiction. That's the primary
20 reason for it, right?

21 **MR. QUATTLEBAUM:** Yes, Your Honor. And I'll be
22 happy to kind of expound upon that.

23 **THE COURT:** Okay.

24 **MR. QUATTLEBAUM:** Where we might be in magistrate's
25 court and where we are in magistrate's court.

1 And we've got one thing in common. This is a
2 fairly confusing issue I think for all of us.
3 But essentially, I guess just kind of a factual
4 synopsis of how we got here might be the best
5 way to produce it. There was an issuance of a
6 violation on February the 9th, 2010. Shortly
7 thereafter, an order and notice of procedure
8 hearing signed by a magistrate in Newberry
9 County, Judge Halfacre, and then there was
10 nothing for several months.

11 **THE COURT:** That's the one that allegedly did not
12 get served, or do you have a notice out for
13 December 2010, right?

14 **MR. QUATTLEBAUM:** That's correct, Your Honor.

15 **THE COURT:** All right.

16 **MR. QUATTLEBAUM:** The next thing that occurred was
17 that our client received a notice of revocation
18 from the Department of Revenue with regard to
19 their beer and wine license, on June the 3rd,
20 2010.

21 **THE COURT:** And that was allegedly based on the 2008
22 consent order that had the three years to run,
23 and if there were a criminal or other
24 violations of the Gainey Act, it would be an
25 automatic revocation, right?

1 MR. QUATTLEBAUM: That's correct.

2 THE COURT: Okay.

3 MR. QUATTLEBAUM: And at that time still no
4 procedure hearing notice had been received by
5 Moose Lodge or carried forward before we found
6 out the protest of their revocation in August
7 of 2010 forward. The client received the
8 notice of revocation and procedure hearing in
9 December. I was confused by it. We were
10 already in the midst of what was kind of the
11 essence of the whole affair with the revocation
12 by the Department of Revenue, and it continued
13 on until they made their ultimate decision.
14 And I think the first time that it had come up
15 about well, maybe what we can do is to cure
16 the -- what we claim to be the initial problems
17 is the not receiving notice of the procedure
18 hearing, and not having the ability to request
19 one at the beginning of the process. Well --
20 and, you know, that was a telephone conference.
21 And, of course, it was my understanding that he
22 was -- we had 20 days to decide whether or not
23 we were going to file any -- or request a
24 procedure hearing. And to be honest, we went
25 back and forth about whether we did want to do

1 that. But the ultimate issue in our mind was
2 that we're in the middle of a proceeding that
3 began at a time when it was not rightly begun.
4 There was no subject matter jurisdiction at the
5 beginning of that process. And that to -- I'm
6 not really sure what would have been the case
7 if we were found one way or the other with
8 regard to the magistrate's court on the
9 procedure hearing. We again, like I said, it
10 kind of had gone back and forth about whether
11 we wanted a request when the days past. We
12 thought maybe well, it might be a good idea to
13 request one, because we're not sure what the
14 situation is going to be. Asked for a consent
15 to request that past the deadline, and did not
16 receive it from the Department of Revenue, and
17 then all the motions starting flowing. So we
18 find ourselves here today. Our original issue
19 was the motion to dismiss, and I'm prepared to
20 argue that --

21 **THE COURT:** Okay.

22 **MR. QUATTLEBAUM:** -- and I'm going to begin with
23 that.

24 **THE COURT:** Okay. So there is nothing going on with
25 magistrate's court?

1 **MR. QUATTLEBAUM:** From what I understand, the
2 magistrate's court would still be available to
3 hold a procedure hearing. I can't speak on
4 behalf of them and there's no one here to
5 represent them. But it's my understanding that
6 the machine had not been destroyed at the time
7 when we were discussing it all. And I've not
8 heard that it's been destroyed since then. So
9 I'm not certain that it wouldn't still be
10 possible to hold a procedure hearing. It's our
11 position that this case should be dismissed and
12 that we should begin a new procedure hearing,
13 rather than a whole procedure hearing during
14 the midst of all this having a lot of -- the
15 case then it would have gone forward on grounds
16 that may not be the same grounds of a protest
17 at the end of the procedure hearing, should we
18 have one.

19 **THE COURT:** Okay. So the underlying argument here
20 is that the threshold requirement for
21 revocation of business and/or i.e., possession
22 of a gaming device, that's not been
23 established?

24 **MR. QUATTLEBAUM:** Yes, Your Honor.

25 **THE COURT:** And if you still have, so to speak, a

1 bite of that apple in magistrate's court?

2 **MR. QUATTLEBAUM:** That's right, Your Honor.

3 **THE COURT:** Okay.

4 **MR. QUATTLEBAUM:** And I believe it would prejudice
5 the client to agree to hold a procedure hearing
6 after a year of -- I don't know what would
7 happen at the end of a procedure hearing.
8 Let's say that the Department wins in the
9 procedure hearing, do we have the right to
10 protest based on -- I mean, do they begin it
11 again? I'm not sure that there was ever any
12 determination about what their -- what they
13 would be willing to do, whether we would have
14 some grounds to protest on the basis of that,
15 or whether we would start right where we were
16 and go forward on the basis that it had already
17 been established for six months prior to us
18 receiving notice of the procedure hearing.

19 **THE COURT:** But you don't think you're time barred?

20 **MR. QUATTLEBAUM:** I don't know.

21 **THE COURT:** You don't think you're time barred from
22 bringing that up?

23 **MR. QUATTLEBAUM:** With regard to the procedure
24 hearing?

25 **THE COURT:** Uh-huh.

1 **MR. QUATTLEBAUM:** Well, I -- that's a possibility.
2 I can't speak to that.

3 **THE COURT:** Right. Okay. Well, I understand the
4 grounds for your motion to dismiss, Mr.
5 Quattlebaum. Is there anything else -- or I
6 don't know of any prior cases here at the
7 Administrative Law Court that deal with that.

8 **MR. QUATTLEBAUM:** I don't believe so, Your Honor.

9 **THE COURT:** All right. Well, let's hear from you,
10 Mr. Gutting.

11 **MR. GUTTING:** Thank you, Your Honor. I would like
12 to start off by saying that first I agree with
13 the factual representations that Mr.
14 Quattlebaum just made. However, I do have a
15 few additions that I'd like to make prior to
16 moving forward with this.

17 **THE COURT:** Certainly.

18 **MR. GUTTING:** Your Honor, I fully understand how we
19 got here today. I think it's important to
20 understand the previous violation that was
21 issued against the Respondent back in 2008.
22 And, Your Honor, on April 30th, 2008, SLED
23 issued Respondent an administrative violation
24 for possession of unlawful game, it's the same
25 violation, the exact same violation I got here.

1 **THE COURT:** Is that consent order attached here
2 somewhere?

3 **MR. GUTTING:** It should be, Your Honor. If not, it
4 was with the documents that I filed with the
5 Court yesterday.

6 **THE COURT:** I'm sure I've got it.

7 **MR. GUTTING:** But it is -- I believe I have a copy,
8 Your Honor, if you need it.

9 **THE COURT:** I was just curious as to whether it was
10 the same machine.

11 **MR. GUTTING:** It is not the same machine, Your
12 Honor. I do know that.

13 **THE COURT:** Okay.

14 **MR. GUTTING:** I believe, if I'm not mistaken, the
15 machines -- there were two machines in 2008,
16 and I believe they were Monkey Land is the name
17 of the game, if I'm not mistaken. The machine
18 at issue here, Your Honor, is the Chess
19 Challenge II machine. That is a tongue
20 twister, Your Honor. I hope I didn't wreck up
21 here.

22 **THE COURT:** I think it's probably a mind twister
23 too. Okay. Chess Challenge II. I was
24 watching part of Shawshank Redemption, and they
25 were --

1 **MR. GUTTING:** Your Honor, on April 30th, that
2 machine was taken before again Magistrate
3 Halfacre, the Newberry magistrate. He deemed
4 that machine to be unlawful. Those machines.
5 I'm sorry. The 2008 two machines.

6 **THE COURT:** Okay.

7 **MR. GUTTING:** He deemed both machines as being
8 unlawful. The Department received the -- I'll
9 refer to it as the 2008 SLED report, as well as
10 the 2008 order of destruction. Because
11 Magistrate Halfacre did issue an order of
12 destruction and notice of procedure hearing in
13 2008. After receiving both of those documents,
14 the Department initiated its revocation
15 proceedings at that time.

16 **THE COURT:** Okay.

17 **MR. GUTTING:** That was around -- on or about May
18 22nd, 2008, the Department issued a notice of
19 intent to revoke. I'm going to refer to that
20 as the 2008 intent to revoke, Your Honor, to
21 Respondent. Respondent timely protested the
22 revocation by a letter dated June 20th, 2008.
23 As part of that letter, Your Honor, the
24 Respondent alleged that it had not received the
25 2008 order of destruction. Interestingly

1 enough, Your Honor, that's the exact same
2 argument that's being made here today.
3 However, the Department does not dispute the
4 fact that, for purposes of this hearing, that
5 Respondent received the 2010 order of
6 destruction on or about December 20th, 2010.

7 **THE COURT:** Okay.

8 **MR. GUTTING:** Your Honor, the reason why that's not
9 in dispute is we don't think it's relevant.
10 It's not at issue in this case, it's not
11 material. Your Honor, on July 23rd, 2008,
12 Respondent signed the consent agreement, as you
13 were referencing earlier, resolving the April
14 30th, 2008 violation with the Department. And
15 as Your Honor correctly pointed out earlier,
16 the consent agreement does state that if
17 Respondent possesses unlawful games within a
18 three-year period, revocation is the agreed
19 upon penalty in that situation. And then
20 again, Your Honor, that brings us full circle
21 to February 9th, 2010. SLED, along with the
22 Newberry County Sheriff's Office, went to
23 Respondent's location, saw the machine. SLED
24 issued a violation, Newberry County -- Newberry
25 County Sheriff's Office seized the machine.

1 The machine was taken before Magistrate
2 Halfacre, Magistrate Halfacre issued the order
3 of destruction, there was a procedure hearing.
4 And again, I realize that the Respondent
5 allegedly did not receive it by December 20th.
6 However, the Department did receive both of
7 those, the 2010 SLED report, and the 2010 order
8 of destruction. So the Department, with those
9 two documents, initiated this revocation
10 proceedings, and issued Respondent a notice of
11 intent to revoke on June 3rd, 2010. And, Your
12 Honor, I refer to that as the 2010 intent to
13 revoke. Again, it was for the same violation,
14 possession of unlawful gaming devices, which
15 constitutes a crime. Your Honor, the
16 Department -- I'm sorry. The Respondent timely
17 protested that revocation by letter. But it
18 failed to notify to the Court that it had not
19 received the 2010 order of destruction. Now,
20 I understand again that Mr. Quattlebaum says
21 they never received it. However, it's the
22 Department's position, while we don't think
23 it's relevant, it is the Department's position
24 that they had prior knowledge of the process
25 and procedure, which I'll refer to as the

1 forfeiture proceedings. That's where the
2 machine is taken before the magistrate, it is
3 determined whether or not the machine was
4 property seized and whether or not the machine
5 should be destroyed. As Mr. Quattlebaum
6 pointed out, the Department, in response to the
7 protest letter, did issue its Department
8 determination on or about February 7th, 2011.
9 I'd like to point out, Your Honor, that is
10 after Respondent received the 2010 order of
11 destruction. So from December to February,
12 Respondent did not notify the Department that
13 it had not received that. Now, Your Honor, I
14 think it's -- I touched on it a moment ago, and
15 I would like to kind of expound on it, if I
16 can. There are forfeiture proceedings, and
17 there are revocation proceedings.

18 **THE COURT:** Uh-huh.

19 **MR. GUTTING:** And I'll talk about the forfeiture
20 proceeding very briefly, because it's not at
21 issue here today. But again, Your Honor, that
22 is -- those are proceedings before the
23 magistrate's court to determine whether or not
24 the machine was lawfully seized, and whether or
25 not the machine should be destroyed because it

1 is an unlawful machine. Forfeiture proceedings
2 have their own due process requirement. As we
3 all know, due process is the government's
4 obligation to not only give the individual
5 notice, but also to an opportunity to be heard.

6 **THE COURT:** Uh-huh.

7 **MR. GUTTING:** Your Honor, both of those elements
8 were satisfied by the order of destruction. On
9 December 20th, 2010, the Respondent had notice
10 and opportunity to be heard by way of the order
11 of destruction. Now, getting way back to why
12 we're here today, we are here today because the
13 Department is seeking to revoke Respondent's
14 on-premise beer and wine permit, and its liquor
15 by the drink license, Your Honor. So we're
16 back to the revocation proceedings.

17 **THE COURT:** Uh-huh.

18 **MR. GUTTING:** Your Honor, the revocation proceedings
19 has its own process of procedure, which is, as
20 you're aware, is governed by the Administrative
21 Procedures Act and the Revenue Procedures Act.

22 **THE COURT:** Right.

23 **MR. GUTTING:** Your Honor, that is whether the
24 proceedings are before the Department, or
25 whether the proceedings are before the Court,

1 those are the two acts that govern this
2 proceeding.

3 **THE COURT:** Is there a code section in Title 12 for
4 the forfeiture proceeding?

5 **MR. GUTTING:** The forfeiture proceeding --

6 **THE COURT:** Or is that Title 16?

7 **MR. GUTTING:** Thank you. No, Your Honor.
8 Forfeiture proceedings are found in Title 12,
9 but they're not in the Revenue Procedures Act.
10 They are --

11 **THE COURT:** Okay.

12 **MR. GUTTING:** -- found in Title 12, Chapter 21,
13 Section 12 -- I'm sorry. 2712, 2712.
14 Essentially that says that it has to be taken
15 before the magistrate, and if he's satisfied,
16 he can issue an order of destruction.

17 **THE COURT:** Okay.

18 **MR. GUTTING:** The Revenue Procedures are referred to
19 as RPA, and the Administrative Procedures Act
20 I'll refer to as APA. Your Honor, that brings
21 us to what the Department believes the issue is
22 here today is to determine whether or not the
23 Department's actions conform to the
24 requirements of the RPA and the APA. And
25 that's how this Court would get its subject

1 matter jurisdiction. Your Honor, with that
2 being said, I'd like to point out there is,
3 with all due respect to Mr. Quattlebaum, there
4 is nothing in the RPA or the APA that supports
5 his argument that this Court lacks subject
6 matter jurisdiction.

7 **THE COURT:** Well, I'm apt to agree with you there.
8 I don't think there's any doubt we have -- and
9 I think the recent supreme court decisions will
10 be clear on that, that we have subject matter
11 jurisdiction. Not that this is a ripeness
12 argument right now. I mean, we obviously have
13 subject matter jurisdiction over revocation of
14 alcoholic beverage licensing matters, period.

15 **MR. GUTTING:** Sure.

16 **THE COURT:** So I'll -- yeah, I'll agree with you on
17 that, that we do have subject matter
18 jurisdiction.

19 **MR. GUTTING:** Thank you, Your Honor. To the
20 ripeness questions, as you phrase it, Your
21 Honor, under South Carolina Code Section 1-21
22 -- I'm sorry. 23-370(c), it says that, "No
23 revocation of any license is lawful unless
24 prior to the institution of agency proceedings,
25 the agency gave notice by mail to the licensee

1 of facts or conduct, which warrant the intended
2 action, and the licensee was given an
3 opportunity to show compliance with all lawful
4 requirements for the retention of the license."
5 Your Honor, under the APA, which is found in I
6 believe it's 12-60-110 and the following, but
7 we're looking more specifically at 12-60-1330
8 (A), "If a division of the department delivers
9 a notice to the license holder that the
10 division of the department shall suspend,
11 cancel or revoke the license administered by
12 the department, then the person can appeal by
13 filing a written protest with the department
14 within 90 days of the denial, or proposed
15 suspension, cancellation or revocation." Your
16 Honor, in short, the 2010 letter of intent to
17 revoke meets both of those requirements. So
18 therefore, not only is Respondent's due process
19 rights with regards to the forfeiture
20 proceedings have been satisfied, they've also
21 been satisfied with regards to their revocation
22 proceedings, Your Honor. While I don't --
23 while the Department does not believe that its
24 due process rights with regards to the
25 forfeiture proceedings are at issue here, Your

1 Honor, we'd like to make that point. One of
2 the points that are made in Respondent's motion
3 to dismiss, is that the -- and if I -- I don't
4 dare speak for Respondent. But it appears that
5 it's saying that a final determination as to
6 the legality of the machine at issue is
7 required for the initiation of administrative
8 proceedings. And, Your Honor, I think it's
9 that distinction of the initiation. The
10 Department does maintain that the magistrate
11 court is the proper place to determine the
12 legality of the machine, in that the machine
13 must be unlawful in order for the Department's
14 allegation that Respondent violated Section
15 61-4-580.

16 **THE COURT:** Mr. Gutting --

17 **MR. GUTTING:** However --

18 **THE COURT:** Is there any -- I don't mean to
19 interrupt you, but I was curious. Is there any
20 case law that you were able to find or that Mr.
21 Quattlebaum was able to find that deals with a
22 Chess Challenge II machine?

23 **MR. GUTTING:** This is case law, Your Honor. Chess
24 Challenge II was addressed in Allendale County
25 for Chess Challenge II. And, Your Honor, if

1 you can give me one second, I've actually got
2 a case here, so --

3 **THE COURT:** Sure.

4 **MR. GUTTING:** If I can recall it.

5 **THE COURT:** I didn't mean to get you off track.

6 **MR. GUTTING:** No. That's fine. Chess Challenge II,
7 or Allendale County as I'll refer to it as,
8 there was a case before the supreme court. And
9 the machine -- there was two machines at issue.
10 They were both Chess Challenge II machines. I
11 think I got that right.

12 **THE COURT:** You got that right.

13 **MR. GUTTING:** Your Honor, in that case, the -- at
14 361 South Carolina 585 to 586, the Court
15 actually states, "South Carolina statutory law
16 prescribes a procedure for seizing and
17 destroying unlawful machines." And then it
18 goes into Section 12-21-2712. Your Honor, in
19 that case the Court held, and I quote. "We
20 affirm the magistrate's decision finding that
21 the Two Chess Challenge II machines seized and
22 examined were lawful." However, in that case,
23 and in Mims Amusement Company versus SLED,
24 which was decided October 3rd, 2005, the Court
25 has, in the Department's opinion, has said that

1 even though these -- it's on a
2 machine-by-machine basis, the Court is -- the
3 Court has not blessed Chess Challenge II. The
4 Court has basically said that -- and actually,
5 if I can go back to Allendale County, Your
6 Honor?

7 **THE COURT:** So does it have something to do with the
8 nature of the payout?

9 **MR. GUTTING:** No, Your Honor. It has to do with
10 whether or not the -- and I want to get this
11 right, Your Honor, obviously. These machines
12 are computers. They can be manipulated.
13 There's a lot of things that can be done to
14 them. And in Allendale County, the Court
15 actually pointed out that even these two
16 machines that we have said are lawful machines,
17 could be seized by law enforcement and brought
18 back before us to be determined whether or not
19 they're still lawful machines, because they can
20 be manipulated. So with that being said, Your
21 Honor, it's still a machine-by-machine basis.
22 Just because a type of machine or a particular
23 game goes -- is blessed by the Court, if you
24 will, it does not mean that every machine that
25 has that game is blessed by the Court. Every

1 machine can still be seized by law enforcement,
2 taken before a magistrate, and an order of
3 destruction can or cannot be issued. But
4 assuming, Your Honor, destruction is issued,
5 then a procedure hearing could be requested by
6 the parties, Your Honor. So with that being
7 said, Your Honor, I think that Allendale County
8 is important. But at this stage of the
9 hearing, Your Honor, I'm not necessarily sure
10 it is. And the reason why I don't believe it
11 is, is because we're not here to determine the
12 legality of the machine. And that is what
13 Allendale County addressed.

14 **THE COURT:** It's not dispositive of the issue in
15 your opinion, Mr. Gutting?

16 **MR. GUTTING:** I couldn't have said it better myself,
17 Your Honor. I apologize, Your Honor. I'm
18 looking back at my notes just to make sure --

19 **THE COURT:** Oh, no. Please. I don't want anybody
20 ever to feel like they leave my courtroom and
21 they feel like there was just something they
22 had to say that would have made a difference.

23 **MR. GUTTING:** Your Honor, as I've stated before, the
24 forfeiture proceeding before the magistrate
25 will determine whether the machines is properly

1 seized --

2 **THE COURT:** Right.

3 **MR. GUTTING:** -- and whether the machine should be
4 destroyed. Your Honor, that's not the issue
5 before the Court today. What is before the
6 Court today, while not necessarily with this
7 motion right now, but what is before the Court
8 today is whether or not Respondent violated
9 Section 61-4-580 by permitting an unlawful
10 machine on its premises, which constitutes a
11 crime. Your Honor, going back to the final
12 determination argument I was talking about
13 earlier, the ripeness of this case, the --
14 under South Carolina Code Sections 61-4-590 as
15 well as 61-6-1830, the Department may initiate
16 revocation proceedings on its own initiative.
17 There is no requirement that we -- that the
18 Department wait for law enforcement to act.
19 Now, SLED does act as an enforcement on both
20 the Department at times going out and
21 conducting compliant inspections, but there is
22 nothing requiring the Department to wait for
23 law enforcement action. Petitioner's -- I'm
24 sorry. Respondent's motion to dismiss, with
25 all due respect, is fundamentally flawed.

1 Essentially what they're saying is that we, the
2 Department, has to wait. They can take its own
3 initiate to revoke the permit and the license,
4 but it has to wait for law enforcement to
5 complete the forfeiture proceedings under the
6 magistrate's court. Your Honor, that -- I
7 would say that's fundamentally flawed, Your
8 Honor. It doesn't -- to me, it doesn't make
9 any sense why the Department can start it, can
10 initiate a proceeding, but then it has to wait.
11 I think the best policy behind this is that
12 they run concurrently so that there is no
13 delay. So once the -- because if you look back
14 in the cases John Wayland Carter as well as
15 Corner Pocket, Your Honor, those are two cases,
16 both of which were before Judge Kittrell. And
17 those, the facts of those cases are identical
18 with one exception. In both of those cases,
19 the Respondent requested a procedure hearing.
20 In this case the Respondent did not. As far as
21 the time line, they're exactly the same. A
22 SLED report was issued, an order of destruction
23 was issued, the Department issued revocation
24 proceedings, and a procedure hearing was
25 conducted, and the revocation hearing before

1 the Court was conducted, Your Honor. So
2 they're exactly the same time line, Your Honor.
3 Your Honor, as far as the motion to dismiss,
4 that is all the Department has. If I've left
5 out anything, I'd like to rest my on memo in
6 opposition, Your Honor.

7 **THE COURT:** Certainly. Thank you, Mr. Gutting.

8 Mr. Quattlebaum, I'd be glad to hear from you.

9 **MR. QUATTLEBAUM:** Your Honor, I'm a little confused.
10 And perhaps we can resolve it. But what I've
11 heard from one hand was yes, the proper place
12 to determine the legality of the machines is
13 the magistrate's court, and that meant we are
14 waiting -- I'm -- the Department is waiting on
15 or is deciding whether to initiate their
16 proceedings. They received the ticket from the
17 SLED agent who writes up the violation, and
18 they received the order of destruction and
19 notice of proceeding hearing from the
20 magistrate. And it's my understanding that
21 they received that in this case before they
22 initiated their proceedings. And that's part
23 of what -- we'll get to the arguments about the
24 discovery issues of whether or not certain
25 depositions need to be taken. That's kind of

1 what we're trying to get to. And what is their
2 process, and how do they determine for their
3 purposes whether their proceedings are right to
4 begin with. I guess I would use some of your
5 term. And in this case that simply wasn't what
6 happened. It is our position that the client
7 has been -- you're putting a Respondent in a
8 bad position wherein you say we'll begin our
9 proceedings on a certain basis before there has
10 been an ultimate decision about the legality of
11 the machine. I'm not sure if it's ever
12 happened before. And I don't know what other
13 attorneys would argue in their cases. But what
14 would happen if -- I mean, I don't know. And
15 that's part of what we would like to know from
16 the Department, what would happen in those
17 cases if after the initiation by the Department
18 of Revenue there was a procedure hearing held
19 where it's found that the machines were not
20 illegal? Would they drop their revocation
21 proceedings? So that's part of what we're
22 trying to figure out. And Your Honor may be
23 correct, that the proper posture of our
24 argument may be ripeness, that at the time they
25 initiated their proceedings, it was not ripe.

1 But whatever the case, our argument is, is they
2 did not have the bases to go forward without
3 having this determination by the magistrate at
4 the time that it was illegal. And some of the
5 case law that the Department was citing, I
6 don't have any -- we completely agree that the
7 determination of legalities made on a
8 machine-by-machine basis, just because this
9 machine is a Chess Challenge II machine, does
10 not per se make it a legal machine, it doesn't
11 per se make it an illegal machine. But that
12 case-by-case determination is required in
13 magistrate's court before a magistrate. And
14 part of that, as was found in State versus 192
15 Coin-Operated Video Machines, and that's 338
16 S.C. 176, a 2000 case, the Supreme Court of
17 South Carolina held very clear that the
18 magistrate's examination of the seized
19 machines, under 12-21-2712, must include an
20 opportunity for the owner of the machines to be
21 heard concerning the legality. In that case
22 there was an admission by the owner of the
23 facility that the machine itself was illegal.
24 That has not been the case in this
25 circumstance. I'd be happy, if you have any

1 questions about --

2 **THE COURT:** No. I'm just really puzzling, trying to

3 puzzle this all through my mind, because you've

4 annunciated what is troubling me. I mean --

5 therefore, I do not grant your motion to

6 dismiss, or don't hold it in abeyance until

7 something or whatever's done at the

8 magistrate's court level. It seems to me we're

9 proceeding down a path, and I've declared that

10 all of sudden we're in the issue during trial

11 of the legality of the machine, and we don't

12 have any proof that it is illegal. And I think

13 particularly, given the fact that in the case

14 cited by Mr. Gutting, which I appreciate you

15 bringing to my attention, the Allendale

16 versus -- the Allendale County case. I don't

17 know. I guess -- I don't know who was involved

18 in it. Anyway, in that case that with specific

19 reference to this machine, did we have a

20 very -- I don't want to be redundant. Specific

21 situation that cries out for the magistrate to

22 go ahead and determine whether this seized

23 machine was illegal. And that's why I feel

24 like proceeding with it at this point and given

25 the point, well, yes, there was a violation

1 because the SLED agent showed up and here's the
2 ticket that was written. But was this machine
3 illegal? And if it wasn't, then I feel like
4 I'm wasting my time and the Department's time.
5 So at this point I'm inclined to grant your
6 motion to dismiss, Mr. Quattlebaum, and dismiss
7 it without prejudice, because, I mean, it if
8 does turn out the magistrate states that is an
9 illegal machine, then they can almost file a
10 motion for summary judgment on that, well, they
11 could I believe. But the -- I don't know what
12 the defense would be at that point.

13 **MR. QUATTLEBAUM:** Yes, Your Honor. I mean, that's
14 part of the problem, requesting one during the
15 middle of this proceeding is what would happen
16 if -- you know, one way or the other.

17 **THE COURT:** Okay. Well, at this point, you know,
18 that's how I'm leaning. But I've not made up
19 my mind yet.

20 **MR. QUATTLEBAUM:** One more thing, Your Honor.

21 **THE COURT:** Sure.

22 **MR. QUATTLEBAUM:** The issue with regard to the
23 initial hearing, the one that preceded that
24 that resulted in the consent --

25 **THE COURT:** Right.

1 **MR. QUATTLEBAUM:** -- agreement, where our client at
2 the time, and just for -- to be clear on the
3 record, there was a different owner or a
4 different operator at the time. And we dealt
5 with that part, and then the person who was --
6 Mr. Hair who is dealing with it now. But
7 regardless on that, if there's a problem with
8 people receiving notice from the magistrate's
9 court before they begin their proceeding, that
10 might be something that needs to be tightened
11 up before we go two years, a year and a half
12 down the road, and then we get back to court
13 just like we are now. It wasn't ever
14 determined, the legal -- you know, the notice
15 that was sent to my client. There was no
16 certified mail showing when it was sent to him.
17 And that to me is a fundamental problem that
18 can be easily remedied. And we wouldn't end up
19 in this situation.

20 **THE COURT:** And I would imagine -- well, I know
21 there was something in the paper recently that
22 SLED is going to try to pursue more of these
23 cases. But the personnel situation has been so
24 bad in the past three or four years, it just
25 hasn't been possible. But I guess I thought,

1 I guess everyone thought that when the machines
2 were declared to be illegal in 2000, that these
3 things would just kind of disappear into the
4 night and we would never hear about them. But
5 I do agree with you that there are a few cases
6 that there are right now, Mr. Quattlebaum, and
7 I -- believe me, I used to work at the
8 legislature. I know every time somebody brings
9 up registered mail, return receipt requested,
10 certified mail, return receipt, see what comes
11 up, the cost and the et cetera, et cetera, et
12 cetera that gets into it. But the few cases
13 there are now, and I agree with you that -- and
14 it's a threshold matter for due process. You
15 have to establish notice. Because you can't
16 notice because you can't -- well, thank you
17 very much, Mr. Quattlebaum. And now, Mr.
18 Gutting, what did you want to say?

19 **MR. GUTTING:** Thank you, Your Honor. I apologize
20 for standing up in the middle of that. But I
21 didn't know if I should --

22 **THE COURT:** You can sit down, or you're welcome to
23 stand up in my courtroom whenever you need to.

24 **MR. GUTTING:** Your Honor, as I stated earlier, the
25 forfeiture proceedings and the revocation

1 proceedings are separate and distinct.

2 **THE COURT:** Yes. Absolutely. But --

3 **MR. GUTTING:** The -- I'm sorry, Your Honor.

4 **THE COURT:** No. But, I mean, one is condition
5 precedent to the other, is it not?

6 **MR. GUTTING:** No, Your Honor.

7 **THE COURT:** It isn't?

8 **MR. GUTTING:** No, ma'am. Not when it comes to the
9 initiation of the proceedings.

10 **THE COURT:** Right, right.

11 **MR. GUTTING:** And that is the distinction --

12 (Talking over each other.)

13 **THE COURT:** -- or whatever it is.

14 **MR. GUTTING:** Yes, ma'am. And that is the
15 distinguishing factor that I want to point out.
16 But also, too, with all due respect to Mr.
17 Quattlebaum, he chooses to ignore why there was
18 not -- or why there has not been a procedure
19 hearing in this case. They received the order
20 on December 20, 2010. Here we are September of
21 2011, and they still have not requested one.
22 So, Your Honor, when I spoke earlier about the
23 fact that the argument is fundamentally flawed,
24 a lot of times what I'll try to do is try to
25 find -- think of a hypothetical to bring it

1 into terms and explain it. But, Your Honor, I
2 don't have to look past the facts of this case.
3 We are almost two years after the date of the
4 violation. If you dismiss this case,
5 Respondent has no obligation to -- there are no
6 requirement to go request a procedure hearing.
7 They were not issued a criminal citation in
8 this case. They were only issued an
9 administrative violation. So if his theory is
10 correct, we could never -- I'm sorry. The
11 Department could never revoke that license just
12 so long as they did -- decided and chose not to
13 request a procedure hearing. And that is the
14 fundamental flaw with his argument, Your Honor.
15 We could be here in 2020 and still not be able
16 to revoke his license if he does not request
17 that procedure hearing. He chose not to do it.
18 That was a choice they made, that is a choice
19 they have to live with. The due process
20 requirements for the forfeiture proceeding were
21 satisfied by the 2010 order of destruction. It
22 gave them notice and opportunity to be heard.
23 The 15 days ran in the middle of January of
24 this year. Now again, Mr. Quattlebaum nor
25 myself can speak to what the magistrate court

1 will decide if they were to go request a
2 procedure hearing, but what if they were to go
3 request a procedure hearing, and the magistrate
4 court said, well, you're too late. Sorry.
5 You're denied. The magistrate order is
6 final -- I'm sorry. The order of -- the 2010
7 order of destruction is final. And that is the
8 position that the Department is taking is that
9 as a matter of law you can accept the 2010
10 order of destruction on its face as being final
11 in a final determination of the illegality of
12 the machine at issue. And that is what the
13 Department is asking you to do, Your Honor.

14 **THE COURT:** Right.

15 **MR. GUTTING:** There isn't this prerequisite that
16 there be a final determination of an illegality
17 prior to the Department initiating its
18 revocation proceedings. Again, Your Honor, I
19 agree. The machine has to be unlawful in order
20 for our obligation to stand. The machine in
21 this case is unlawful because on the -- well,
22 I'll pick a number -- I'll pick a date in
23 January. January 15th, 2011, the machine was
24 unlawful. There's nothing that the Respondent
25 could to do before the magistrate.

1 **THE COURT:** Wait a minute. There's a code section
2 that says that if one doesn't request a hearing
3 after the notice of destruction within 15 days,
4 it's deemed to be unlawful?

5 **MR. GUTTING:** Yes, Your Honor. But that is -- and
6 in the order, Your Honor, if I may, I actually
7 have Magistrate Halfacre's order in front of
8 us. And that is the language that is quoted.
9 And as far as deemed unlawful, I'm not too
10 sure, Your Honor. I believe -- and I want to
11 get the exact language, and I do apologize.

12 **THE COURT:** Go ahead. Take your time. There's a
13 lot of paper here.

14 **MR. GUTTING:** Your Honor, if I can, the Department
15 submitted a -- some filings just the other day,
16 and I believe we submitted this document to the
17 Court several times. But it is the 2010 order
18 of destruction, as I refer to it. Your Honor,
19 the last paragraph of page one, Magistrate
20 Halfacre states, "I find that the Defendant's
21 machines are in violation," and obviously, Your
22 Honor, this is some other language that's in
23 parenthesis. But "The machines are in
24 violation of South Carolina Code Annotated
25 Section 12-21-2710, and do hereby order their

1 destruction. The Defendant, being Moose Lodge
2 of Newberry located at 2440 Wilson Road,
3 Newberry, South Carolina, has 15 days from the
4 date of receipt of this order to request a
5 procedure hearing to contest the illegality of
6 the machine, otherwise the machines will be
7 destroyed." Now, Mr. Quattlebaum is correct.
8 The machines have not been destroyed, Your
9 Honor. Why have the machines not been
10 destroyed? It's my understanding that these
11 machines that I've mentioned to you earlier are
12 computers. There's a lot of materials, items,
13 chemicals and whatnot. You can't just simply
14 take a sledgehammer out and hit these machines.
15 There's things that could -- my understanding
16 is that they could have an effect on the
17 environment, so they're not destroyed. But I
18 think the more thing here, Your Honor, is
19 Respondent should not be able to benefit from
20 the fact that these machines have not been
21 destroyed.

22 **THE COURT:** Okay. I don't see in 2710, unless
23 there's something in the sub, anything about
24 the 15 days. Let's see.

25 **MR. GUTTING:** No, Your Honor. And if I'm not

1 mistaken, I do not believe that that is
2 statutorily derived. I believe that's just
3 part of the order.

4 **THE COURT:** Okay.

5 **MR. GUTTING:** But if I --

6 **THE COURT:** Okay. The 15 days to contest the order
7 of destruction.

8 **MR. GUTTING:** Yes. To contest the legality of the
9 machines or they will be destroyed.

10 **THE COURT:** Okay.

11 **MR. GUTTING:** Um --

12 **THE COURT:** And there was this.

13 **MR. GUTTING:** And there has not been, Your Honor.
14 The order has not -- excuse me.

15 **THE COURT:** It's quite all right. Take your time.

16 **MR. GUTTING:** Another thing I'd like to point out
17 too, Your Honor, as I mentioned before, there
18 was not a criminal citation issued in this --
19 to Respondent in this case.

20 **THE COURT:** It was just a civil sanction, right?

21 **MR. GUTTING:** The Department is not a party to the
22 forfeiture proceedings. That is between local
23 law enforcement and in this case it would be
24 Newberry County. So to say that well, well, we
25 could just go ahead and request a procedure

1 hearing and we could decide the illegality of
2 it, that's not true, Your Honor, because that's
3 not the Department's -- that is a criminal
4 action. Or actually, I'm sorry. It's actually
5 a civil action. It's for the forfeiture of
6 property. But that is not an action that the
7 Department that the part -- that would be party
8 to. Your Honor, another thing that I would
9 like to point to as well is under the Allendale
10 County case as well as the I believe 192
11 Coin-Operator and the Mims Amusement, these
12 machines are contraband per se, meaning they
13 are illegal at the time of seizure. As soon as
14 SLED seizes it, then it's illegal. That's the
15 reason why we have the process is to take it to
16 the magistrate to either confirm or deny SLED's
17 findings. In this situation, the magistrate
18 confirmed it. It's an unlawful machine, here's
19 the order of destruction.

20 **THE COURT:** That's in a sense the law of the case
21 until someone overturns it?

22 **MR. GUTTING:** I'm sorry. Say that again.

23 **THE COURT:** That's the sense the law of the case.
24 It would have to be appealed I assume to the
25 circuit court and then to the supreme court or

1 the court of appeals?

2 **MR. GUTTING:** The magistrate's order?

3 **THE COURT:** Yes.

4 **MR. GUTTING:** Yes, ma'am. Yes, Your Honor, I'm
5 sorry. The way it would go is through the
6 circuit court, to the court of appeals, to the
7 supreme court. Yes, Your Honor.

8 **THE COURT:** Right.

9 **MR. GUTTING:** And so to --

10 **THE COURT:** And that hasn't been done.

11 **MR. GUTTING:** No. That has not been done, Your
12 Honor. I'm not too sure it can be done, Your
13 Honor. Because again, we don't know what -- we
14 don't know how the magistrate's court would
15 rule if, and it's a big if, Respondent would
16 request a procedure hearing. But, Your Honor,
17 the Department is of the position --

18 **THE COURT:** But if there wasn't one requested within
19 the 15 days, if I was the magistrate, I would
20 say it was game -- no pun intended, game over.
21 And they'd have to go to circuit court within
22 30 days after that. That would be --

23 **MR. GUTTING:** And then again, as far as their -- so
24 is your question what their appeal rights would
25 be at this point?

1 **THE COURT:** Yeah. I --

2 **MR. GUTTING:** I think their appeal rights are
3 finished. Because -- so if we use my date of
4 January 15th, 2011, February 15th, 2011 was the
5 last day they could appeal that order. So,
6 Your Honor, it's again fundamentally flawed to
7 say go back to the magistrate's court, because
8 there's nothing there in our opinion. I think
9 we all know that. One further, Your Honor, I
10 think that you can accept the 2010 order of
11 destruction as a letter of law, that it is
12 final. If it's not, I'm trying to think of a
13 hypothetical here to help me with my argument
14 here. But it has to be final. If it wasn't --
15 if it wasn't final, again go back to the fact
16 that Respondent could for the next 20 years not
17 request the procedure hearing, and the
18 Department could never revoke their license.
19 And that is just not what the statute was
20 intended to do.

21 **THE COURT:** Okay. Thank you, Mr. Gutting.

22 Mr. Quattlebaum.

23 **MR. QUATTLEBAUM:** Yes, Your Honor. The problem is
24 that we keep coming back to what I think is the
25 essence of this issue. And now, is it a

1 difficult situation to try to deal with on the
2 back end with where they begin -- they initiate
3 their proceedings and what they base it on.
4 And I'm not here to answer that question.
5 That's for the Department of Revenue to
6 determine when it's best to initiate their
7 proceedings. Now, whether they do initiate
8 them after a final determination of the
9 magistrate or not, is something separate and
10 apart from whether they should initiate them
11 before a final determination of the legality of
12 the machine. So if -- what I'm saying, what
13 they do may not be what they should do. And
14 his argument, that while they initiate
15 proceedings against owners prior to a final
16 determination all the time, I don't know that
17 that's a wise thing to do, particularly when --
18 if it is determined legal later on, do they
19 continue on with theirs? But from what I
20 understand is that when they are -- when the
21 Department is pointing to it's bases for the
22 revocation, they keep pointing back to 27-12 --
23 I'm sorry. 12 --

24 **THE COURT:** 21-27.

25 **MR. QUATTLEBAUM:** 21 and 27-12.

1 **THE COURT:** Right.

2 **MR. QUATTLEBAUM:** Yes, Your Honor. And that clearly
3 requires the opportunity for an owner to be
4 heard with regard to the legality of the
5 machine. Now, I'll grant you that the way that
6 it transpired in this case is a confusing one.
7 There's no question about that. What's clear
8 is that my client didn't receive it before the
9 initiation of their proceedings. There was
10 some six months into the proceedings before
11 they received it. Now, should they have
12 requested a procedure hearing at that point?
13 Now, that can be -- that can be argued about.
14 I don't know there would -- we would have been
15 having the same issue then as we do now. But
16 what if we do request one, the finding is
17 something different than what it was in the
18 beginning, and what do we do with that? It's
19 a procedural problem for us to be in the middle
20 of a revocation proceeding based on the
21 legality. They've already made an initial
22 determination. The Department has already made
23 an initial determination, and then it's found
24 legal months later.

25 **THE COURT:** Mr. Quattlebaum, has your client made

1 the request for a procedure hearing?

2 **MR. QUATTLEBAUM:** No, Your Honor. And I'm
3 describing to you what the issue -- the
4 potential problem with that is, is that we're
5 already -- the -- where is the certainty in
6 what's going to be happening with regard to the
7 Department of Revenue's proceedings even if we
8 do request a procedure hearing?

9 **THE COURT:** I was trying to think. Do we have a
10 problem that if there's no final determination
11 within the three-year window of the 2008
12 consent agreement, it's if there's a violation
13 within the three years, right? So that would
14 not be -- even if it was say two, a year from
15 now, it would determine that the machines are
16 illegal, that was the --

17 **MR. QUATTLEBAUM:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MR. QUATTLEBAUM:** I would certainly defer to
20 whatever language --

21 **THE COURT:** Mr. Quattlebaum, are you representing to
22 this Court that if I can grant your motion to
23 dismiss, that you go before -- or file with the
24 magistrate for a post-procedure hearing as to
25 whether or not the machine is illegal, that

1 that is what you will do?

2 **MR. QUATTLEBAUM:** Yes, Your Honor.

3 **THE COURT:** Does that make you feel any better, Mr.
4 Gutting, if I were to grant the motion?

5 **MR. GUTTING:** It does, and then it doesn't, Your
6 Honor. And I apologize for the talking out of
7 both sides of my mouth. The general assembly
8 has in a way envisioned this issue coming up,
9 in my opinion. And part of the Revenue
10 Procedures Act, there is a section that is
11 12-60-1320 as well as 1330, Your Honor, this
12 deals with the exhaustion of pre-hearing
13 remedies.

14 **THE COURT:** Uh-huh.

15 **MR. GUTTING:** In order to exhaust -- in order for
16 the Respondent to have exhausted his pre-
17 hearing remedies, the Department would have a
18 -- would have had to have issued a Department
19 determination, which it has. Which is -- can
20 be found under the 1320 section I just cited to
21 you, Your Honor. But under the 1330 section,
22 before a person may seek a determination by an
23 administrative law judge, pursuant to Section
24 12-60-1320, he shall exhaust his pre-hearing
25 remedy. Under (A)(2), if the person failed to

1 provide the Department within the 90-day time
2 period with the facts, law, and other authority
3 supporting his position, he shall provide them
4 to the Department. The administrative law
5 judge shall then remand the case to the
6 Department for reconsideration in the light of
7 the new facts or issues, unless the Department
8 elects to forgo the remand.

9 **THE COURT:** All right.

10 **MR. GUTTING:** On February 7th, 2011, when the
11 Department issued the Department determination,
12 Respondent knew of facts and legal arguments
13 that it was going to -- that -- I'm sorry.
14 Knew facts that it had not disclosed to the
15 Department, i.e., the order of -- they had not
16 received the order of destruction. Your Honor,
17 in this situation, I would say that the proper
18 thing to do in this situation is not to dismiss
19 the case, but rather to remand the case to the
20 Department for consideration of these new facts
21 that we've learned here today. Because as I've
22 mentioned in my motion, this was never raised
23 during the administrative proceeding. It was
24 raised for the first time here. And I do not
25 dispute that subject jurisdiction and ripeness

1 can be raised at any time. But they were not
2 raised during the administrative proceedings,
3 Your Honor. So I ask that the case be
4 remanded. However, Your Honor, with that being
5 said, the Department would take the position
6 that the 2010 order of destruction was final on
7 the January 15th date. And then even if we
8 hadn't issued it, we would be right back here.
9 So that -- in a way, I guess I'm kind of
10 talking against myself, but what I'm getting at
11 is, I think the remand is appropriate. The
12 Department will forgo that remand unless the
13 Court thinks that this is a relevant argument
14 and that it is a relevant issue, rather. We
15 would ask that the case be remanded to the
16 Department, Respondent be instructed to request
17 the procedure hearing within an expedited
18 period of time, no less than 10 days, I would
19 think. And then we can move forward.

20 **THE COURT:** I don't think you talk out of both sides
21 of your mouth at all, Mr. Gutting. I think
22 you're thinking out loud and thinking on your
23 feet, which is what both of you good lawyers
24 are trained to do and what people are supposed
25 to do. And I frankly think that the proposal

1 is very appealing to me, because I think this
2 thing is going to be back up here anyway.
3 Unless the magistrate says absolutely that
4 based on what I've seen, this is
5 distinguishable from the earlier Allendale case
6 involving the same machines, and these machines
7 are out and out, Chess Challenge II are
8 illegal, and then I think we'll be back up here
9 pretty quickly. So Mr. Gutting, if -- yeah.
10 I'm going to rule that what you suggested, the
11 remand --

12 **MR. GUTTING:** Okay.

13 **THE COURT:** -- and with the direction to Mr.
14 Quattlebaum to his client to file within 15
15 days for a procedure hearing with the
16 magistrate, and let that proceed, and we'll
17 hold this in abeyance until you get through
18 with that.

19 **MR. QUATTLEBAUM:** Your Honor, the only thing that I
20 would ask is some clarification with regard to
21 where the revocation proceeding will be.

22 **THE COURT:** The revocation proceeding is absolutely
23 held in abeyance. I'm going to stay it until
24 you finish with that.

25 **MR. QUATTLEBAUM:** Well, I would just argue that what

1 should happen is that if the magistrate finds
2 either for or against, then the revocation
3 proceeding begins anew. And if Your Honor
4 feels otherwise, I'll certainly defer to you.
5 But my impression is that they've begun the
6 process too early, that prejudices my client in
7 a way that's difficult to deal with. I mean,
8 it is a confusing circumstance. And that what
9 should happen is that there is a determination
10 of legality before the initiation of the
11 proceedings starts with the Department of
12 Revenue to start with. And I just want to
13 clarify that what you're saying is we'll be
14 held in abeyance until the determination, and
15 then we would start somewhere back where we are
16 now?

17 **THE COURT:** No. If the magistrate says it's legal,
18 it's game over again. There would be no
19 revocation.

20 **MR. QUATTLEBAUM:** Absolutely.

21 **THE COURT:** And I'll put that in there, that if the
22 magistrate holds the proceeding, this case
23 would be dismissed with prejudice.

24 **MR. GUTTING:** Your Honor, if I could ask, what would
25 be the result if the magistrate either

1 dismisses the case for being untimely, for not
2 filing a timely request, or the magistrate does
3 confirm its 2010 order of destruction? What is
4 the outcome of this case when we come back
5 here? Because, Your Honor, with all due
6 respect to Mr. Quattlebaum, I do understand
7 what he's asking, but I don't think that it is,
8 as I stated earlier, there's nothing -- the
9 revocation proceedings were properly initiated
10 under the RPA and the APA. And so I don't
11 think that the ripeness issue is -- I
12 understand his concerns about that, Your Honor.
13 But I don't think it's -- we're almost two
14 years past this violation. To grant what he's
15 asking you to do is to start the whole
16 revocation process all over again, the 90-day
17 notice, the protesting. I think we're well
18 past that. I just want to be clear that --

19 **THE COURT:** No. I think your statute allows you to
20 do what you did.

21 **MR. GUTTING:** Okay.

22 **THE COURT:** I don't think there's any doubt about
23 that. But what I will do, like I said, we have
24 the authority to stay any proceedings, and
25 we'll just freeze this as of right now. But

1 what I would like -- I mean, I do understand
2 you're trying to protect your client, Mr.
3 Quattlebaum. And as I said, I would like to
4 make it clear in an order. And if you could
5 work on one, Mr. Gutting, and send it to Mr.
6 Quattlebaum. I would like to make it clear
7 that all proceedings here are stayed and the
8 revocation proceeding is suspended. And if the
9 magistrate should find that they are -- that
10 the machines are legal, then this case will be
11 dismissed. I'll make that clear. I don't
12 believe I can go into every circumstance of
13 what he might say if it's, you know, yeah, the
14 order of destruction, and then we'd be back up
15 here on more motions I think. But I think you
16 both, you did some good lawyering, both of you,
17 and I think you're both representing your
18 clients extremely well. And I think this is a
19 very reasonable resolution of what's a
20 complicated procedural matter. And I think
21 those of us who have been to law school know
22 the most complex things we ever see are things
23 like that that involve procedural statutes,
24 especially when there's a criminal and civil
25 involved. I mean, this is what people pull

1 their hair out of on bar exams, in which we
2 never maybe have exactly a right answer, but we
3 might have one, two, three, four, five
4 different answers in there. But if you would
5 -- if you think you can reduce it to writing,
6 Mr. Gutting, and share it with Mr. Quattlebaum,
7 I'll be happy -- I'll tweak it, whatever it
8 needs, and talk with you both, and sign it. So
9 can you do it within 20 days?

10 **MR. GUTTING:** I can do it within 10 days, Your
11 Honor.

12 **THE COURT:** Ten days. That would be great. I'll
13 look forward to having it. Thank you,
14 gentlemen, for being here arguing this. And
15 since you're both very good lawyers, I'm sure
16 you're pleased with yourselves and both your
17 clients.

18 **MR. GUTTING:** Thank you, Your Honor.

19 **THE COURT:** Thank you.

20 **MR. GUTTING:** Your Honor, one last question. Do you
21 want that as an order to the stay order or the
22 order of remand?

23 **THE COURT:** Order of remand.

24 **MR. GUTTING:** Okay. Thank you.

25 **(There being nothing further, the hearing adjourned**

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at 2:52 p.m.)

CERTIFICATE

This is to certify that the within hearing consisting of Fifty-Four (54) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 8, 2012.



Diane M. Hendricks
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 27, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No. 11-ALJ-17-0129-CC

South Carolina Department of Revenue,

Respondent,

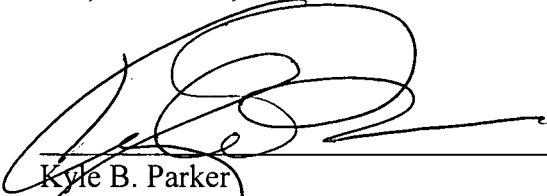
v.

Newberry Lodge No. 2211, Loyal Order of Moose,
d/b/a Moose Lodge 2211,

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to Respondent's Return to Appellant's Motion for Leave to Move for Relief from Judgment, by mailing a copy of same via regular United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed to its attorney of record, J. Abraham Gutting, Esq., South Carolina Department of Revenue, P.O. Box 12265, Columbia, SC 29211.



Kyle B. Parker
W. Chad Jenkins
ROPE & HUDGENS ATTORNEYS, P.A.
1508 College Street
Newberry, SC 29108
Phone (803) 948-9263
Fax (803) 276-8684

Newberry, South Carolina
November 30, 2012

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DEC 04 2012

SC Court of Appeals

JOSEPH W. HUDGENS
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KYLE B. PARKER

**DOPE
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THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

December 3, 2012

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SC Court of Appeals

VIA U.S. MAIL AND FACSIMILE (803) 734-1839

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: South Carolina Department of Revenue v. Newberry Lodge No. 2211, Loyal
Order of Moose, d/b/a Moose Lodge 2211
Docket No.: 11-ALJ-17-0129-CC

Dear Ms. Kitchings:

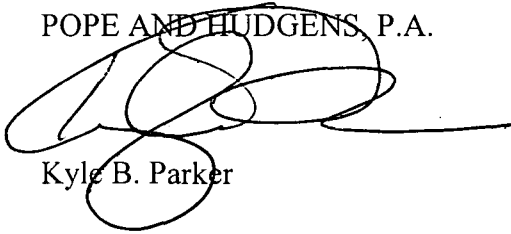
Enclosed please find for filing the original and one copy of the Proof of Service for the Appellant's Reply to Respondent's Return to Appellant's Motion for Leave to Move for Relief from Judgment previously filed with the Court. It was erroneously omitted from such filing. Please file the original and return a file-stamped copy to me in the self-addressed stamped envelope provided for your convenience.

I thank you in advance for your assistance in this matter. Should you have any questions, concerns, or require something further, please feel free to give me a call.

With my kindest regards, I am,

Sincerely,

POPE AND HUDGENS, P.A.



Kyle B. Parker

KBP/tem

Enclosures

cc: J. Abraham Gutting, Esquire

JOSEPH W. HUDGENS
THOMAS H. POPE III
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KYLE B. PARKER

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(1927-1994)

November 30, 2012

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: South Carolina Department of Revenue v. Newberry Lodge No. 2211, Loyal
Order of Moose, d/b/a Moose Lodge 2211
Docket No.: 11-ALJ-17-0129-CC

Dear Ms. Kitchings:

Enclosed please find for filing the original and seven copies of Appellant's Reply to Respondent's Return to Appellant's Motion for Leave to Move for Relief from Judgment, along with a Proof of Service for the same, in regards to the above referenced matter. Please file the original and return a file-stamped copy to me in the self-addressed stamped envelope provided for your convenience.

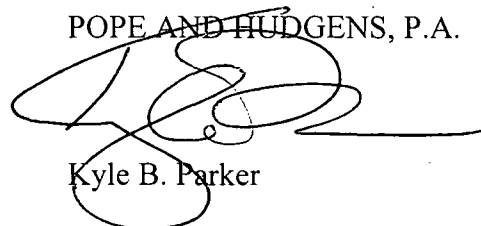
By copy of this letter, I hereby serve a copy of the same upon opposing counsel.

I thank you in advance for your assistance in this matter. Should you have any questions, concerns, or require something further, please feel free to give me a call.

With my kindest regards, I am,

Sincerely,

POPE AND HUDGENS, P.A.



Kyle B. Parker

KBP/tem

Enclosures

cc: J. Abraham Gutting, Esquire