THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

Case No. 17-ALJ-17-0001-CC
Appellate Case No. 2018-0186

Emad Tadros, M.D,.....Respondent,

v.

The Richland County Assessor,.....Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case law

State Court Rules

STATEMENT OF ISSUES ON APPEAL

I. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAX ASSESSMENT NOTICES AT ISSUE IN THIS CASE WERE NEVER DELIVERED TO THE RESPONDENT TADROS.

II. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE NOTICES OF ASSESSMENT AT ISSUE IN THIS CASE WERE NOT SERVED.

III. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAXPAYER NEVER RECEIVED THE NOTICE AT ISSUE IN THIS CASE.

IV. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAXPAYER'S APPEAL IN THIS CASE WAS WITHIN THE PROPER TIME PERIOD.

STATEMENT OF THE CASE

The Appellant argues multiple issues in its brief, all of which stem from a relatively simple question: did Respondent Tadros file a timely appeal based on the receipt of his tax assessment notice? The Appellant argues it does not matter when he received it, because it must have been mailed. Respondent's position is equally clear. The evidence shows he did not receive it until February of 2016. As a result, his March appeal was timely.

Terry Fancey, deputy assessor for appraisal at the Richland County Assessor's Office, testified regarding the issuance of the tax assessment notices at the center of this case. (Tr. 8). He testified his review of the documentation in this case did not reveal any reason why the notices were not delivered to Dr. Emad Tadros's address. (Tr. p.10, ll.6-11). But he had no evidence they were delivered.

Dr. Tadros purchased two commercial properties in the Adesso condominium complex at the corner of Main Street and Blossom Street in Columbia, South Carolina for $1,850,000. (Tr. p.10, l.23 – p.11, l.5). The purchase was categorized as an "assessable transfer of interest" which means it can be reassessed at its fair market value for tax purposes in the year following the transaction. (Tr. p.11, ll.8-22). Fancey testified assessment notices were mailed out on those two properties. (Tr. p.11, l.23 – p.12, l.1).

According to Fancey, both notices were mailed on July 17, 2015 and provided an October 16, 2015 deadline for appeal. (Tr. p.12, ll.10-18). A March 10, 2016 phone call and a March 14, 2016 letter appealing the values of the properties were the first communications from Tadros to the Assessor. (Tr. p.15, ll.7-19).

Fancey testified the notices were sent by a company called SI Solutions. (Tr. p.21, ll.13-19). He went through the tracking data from SI Solutions, which the Appellant

accurately describes in its brief. Fancey testified the Assessor did not receive the notice back in the mail. (Tr. p.26, l.12 – p.27, l.3).

Fancey admitted on cross-examination Tadros told his office he had not received any tax notices in his first communication with the office. (Tr. p.29, ll.21-25). He also discussed the scanned items related to the notice mailings, which he agreed were all from the sending end of the mailing transaction. (Tr. p.30, ll.11-21). There was no evidence of receipt.

Fancey also agreed the SI Solutions records showed progress through the postal system until the notice arrived in the San Diego post office, which was 20 miles from where Dr. Tadros lives. (Tr. p.31, l.19 – p.32, l.13). Despite his earlier confidence in the records' reflection of the postal progress, Fancey became less clear about the end result of the mailing. (Tr. p.32, ll.14-21; p.33, ll.2-10). He was clear that there was no way to say whether Dr. Tadros received the notices, though. (Tr. p.33, ll.20-24).

Fancey conceded he did not know whether there was any issue with mail reaching San Diego around the time these notices were sent. (Tr. p.34, ll.6-25). When asked about other Richland County property owners in the San Diego area, Fancey guessed there must be some, but could not offer any support for his guess. (Tr. p.35, ll.1-14). Despite the Assessor's continued position Dr. Tadros should not have been allowed to appeal his tax values, his penalty payments were refunded. (Tr. p.36, ll.5-13).

Dr. Tadros also testified in support of his appeal of the tax values. He explained the problem with his purchase of the property at issue. A tenant of the commercial property had been instructed to lie about his tenancy until the property closed. (Tr. p.41, ll.3-10). The property was purchased as a fully rented commercial investment, but delivered as a partially vacant property.

Tadros received the first notice of the tax amount in early 2016 and immediately began disputing the tax amount. (Tr. p.42, ll.1-6).

Tadros also testified about the postal facilities near his home. There was a large post office in Del Mar, California, about two miles from his house. (Tr. p.43, ll.9-14). There was also a post office about nine miles away in Carmel Mountain, California. (Tr. p.43, ll.14-16). When Dr. Tadros receives any mail addressed to him that would need to be picked up, such as certified mail, it is always at the Del Mar post office. (Tr. p.45, ll.2-9). He testified his obsessive nature drove him to immediately respond to the tax values when they were received. (Tr. p.45, ll.21-25).

The Administrative Law Court issued its decision a few weeks after the hearing. It found delivering a notice to a third-party vendor does not amount to service on the addressee. But more importantly, the Court assessed the evidence and found the tracking information from that third-party did not show delivery to the taxpayer. (Order p.4). The Court also found the values were incorrect and reduced the property values for the year 2015 on both parcels. (Order p.6-7). The Assessor has not appealed that part of the ruling.

The Assessor made a motion for reconsideration, raising the same issues argued on appeal. The Court denied that motion.

STANDARD OF REVIEW

Contrary to the Appellant's argument, the Administrative Law Court does not interpret any statutes in its Order. This Court is not free to decide the matter without deference to the Administrative Law Court's decision.

This entire case turns on the Administrative Law Court's factual finding that the notice of assessment at issue was never delivered to Dr. Tadros. If there is substantial evidence for that finding, the decision should not be overturned. *Be Mi, Inc. v. S.C. Dep't*

of Revenue, 408 S.C. 290, 297 (Ct.App. 2014). Substantial evidence is more than a mere scintilla, but just enough that reasonable minds would agree with the court's decision. *Id.* If there is conflicting evidence, this Court should defer to the Administrative Law Court's findings. *Id.* Even if two conclusions could be reached from the evidence, the ALC's finding should be upheld if supported by substantial evidence. *Id.,* 297-98.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAX ASSESSMENT NOTICES AT ISSUE IN THIS CASE WERE NEVER DELIVERED TO THE RESPONDENT TADROS.

The Appellant focuses its argument on the idea that once a letter is mailed, its delivery cannot be questioned. This is not the law in South Carolina.

A properly addressed and mailed letter is presumed received by the addressee. *Calder v. Commercial Casualty Co.,* 182 S.C. 240, 244-45 (1936). This presumption, however, is rebuttable. *Id.* If there is evidence to rebut the presumption of delivery, the simple act of mailing is not evidence the notice was received. *Bakala v. Bakala,* 352 S.C. 612, 625 (2003); *State v. Langston,* 275 S.C. 439, 441 (1980).

Tadros has presented evidence to rebut the presumption of delivery. The Appellant's own evidence shows detailed tracking through postal facilities from Columbia to San Diego. Though that evidence details the specific travel through Columbia, including two different mail facilities in Columbia, it does not reflect any activity past the main San Diego post office. Combined with Dr. Tadros's testimony about both the post offices near his house and his failure to receive the notice, this evidence is sufficient to rebut the presumption of delivery.

a. Whether the Assessor was allowed to delegate mailing makes no difference in this appeal.

Appellant's delegation argument does not present the proper analysis for this Court. It does not matter how the notice was mailed. It matters that there is evidence the notice was never received. The same delegation the Appellant argues complies with the statute offers the very evidence that shows non-compliance with the statute. The third-party vendor mailing the notice has tracking capabilities. The Appellant presented that tracking information in the hearing below. The fact that the information reflects the details of the letters traveling from the Assessor's Office to a post office in San Diego, California does not provide evidence the letter was delivered.

In fact, the evidence reveals the exact opposite. It makes no sense that one can rely on the details of tracking information, but the lack of details beyond a certain point would somehow allow an assumption of delivery. Rather, there is substantial evidence that the letter did not make it to its final destination.

The ALC cited *Southbridge Properties, Inc. v. Jones* for the proposition that simply delivering a notice to a third-party vendor is not proper service. 292 S.C. 198, 199 (1987). That is a correct statement of the law, but it probably does not matter much in this case. The Supreme Court did hold that delivery to a third-party vendor is not service on the addressee, but also recited the familiar idea that service by mail is completed when a properly addressed letter is deposited in the mail with sufficient postage. *Id.*

This was not the foundation of the ALC's decision. Immediately after its cite to *Southbridge*, the ALC was clear that there was evidence Dr. Tadros never received the notice. In other words, the rebuttable presumption of proper service by mail was rebutted. Even if this Court disagrees with the ALC's interpretation of *Southbridge*, it should still affirm on the substantial evidence the notice was never received, as allowed by the South

Carolina Appellate Court Rules. *SCACR,* Rule 220(c)(allowing this Court to affirm on any ground appearing in the record).

b. The ALC did not literally interpret the § 12-60-2510 to require the Assessor to physically mail the assessments.

There is no danger of an absurd result here because the result makes perfect sense. When faced with substantial evidence a notice was not received, the Court cannot and should not presume it was received. That would actually be an absurd result.

The Appellant continues to concentrate on the ALC's decision that delivery to a third-party mailing vendor does not constitute service, while ignoring the part of the ALC's decision finding evidence the notice was never delivered. In effect, the Appellant is arguing for a literal interpretation of § 12-60-2510. Appellant would like for this Court to find evidence of mailing is evidence of receipt, which is the opposite of the law. Evidence of mailing only results in proper service when there is no, or insufficient, evidence of receipt.

Because there is evidence the notice was never received, there is evidence there was not proper service as contemplated by the statute. Anything else would be absurd. For example, a letter that got stuck on the bottom of the mail receptacle and was later found having never made it past that postal receptacle, would be considered served. Even though there would be incontrovertible evidence the mailing got hung up in the postal process, a literal reading of the statute would allow that which had never been served to be considered served.

The ALC did not require the Assessor to physically mail a notice of tax assessment. It simply is not allowing the Assessor to claim something is served when there is evidence it was not served. This is not only in line with the law, it is a reasonable position for the

Court to take. The point of the statute is for the assessment to get where it is going. Anything else would be an absurd interpretation.

II. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE NOTICES OF ASSESSMENT AT ISSUE IN THIS CASE WERE NOT SERVED.

The Administrative Law Court did not find the notice was not served as a matter of law; it found that it was not served as a matter of fact. The difference is critical. This Court could review a decision of the ALC for an error of law with no particular deference to the ALC's findings. *Charleston County Assessor v. LMP Props.*, 403 S.C. 194, 198 (Ct.App. 2013). On a question of fact, this Court cannot substitute its judgment for that of the ALC unless there is not substantial evidence to support that decision. *Be Mi, Inc., supra.*

While the Appellant correctly recognizes evidence of mailing raises a rebuttable presumption of receipt, it takes issue with the facts that rebutted that presumption in this case. The primary evidence cited by the ALC was the tracking information that not only failed to show delivery to Dr. Tadros, but showed a stop at a point along the delivery route which would not have resulted in delivery to the final destination. Combined with Dr. Tadros's testimony he never received the notice, that is more than substantial evidence to support the ALC's decision.

Appellant claims Dr. Tadros's testimony is not enough to rebut the presumption of mail delivery. The only case cited in support of this is a United States Tax Court Memorandum which arguably supports Dr. Tadros. The Tax Court noted that its precedent dictated that receipt of a notice is the relevant event, not the mere mailing of the notice. *Klingenberg v. C.I.R.*, T.C. Memo 2012-292, *13 (2012). The Tax Court allowed the presumption of delivery because there was a wealth of evidence prior notices had been

received at the same address. *Id.*, *14. No such evidence exists in this case. The ALC relied on the tracking data.

III. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAXPAYER NEVER RECEIVED THE NOTICE AT ISSUE IN THIS CASE.

Appellant argues that because Respondent is not a sophisticated purchaser, he must not have understood what he was getting into. As an initial matter, Respondent was the victim of a complex fraud perpetrated by an experienced and sophisticated real estate broker. But more importantly, what difference does it make?

The question is whether or not Dr. Tadros received the notices of assessment. Dr. Tadros's experience with commercial property is utterly irrelevant to that question. In addition, Appellant argues Dr. Tadros's testimony and previous letters lacked credibility. The Appellant's "logical" view of the matter is that "[i]t is not likely that these tax bills floated around the U.S. Postal Service for two to three months and then magically appeared in the Taxpayer's mailbox."

The ALC, as well as this Court when reviewing factual matters, must rely on record evidence. Neither court can rely on speculation as to what happened to the letter. The Appellant essentially asks this Court to assume the letters must have arrived, in the face of clear tracking evidence that the letters did not arrive.

The Appellant argues in its brief that evidence the notices made it to within 20 miles of Dr. Tadros's house is good enough to show delivery. Strangely, that argument relies on the idea that the tracking information is infallibly accurate to a point, but then inaccurate beyond that point. No one testified to the Appellant's contention that the scanning would have stopped at the main San Diego facility and would not have continued through the remaining post offices between that facility and Dr. Tadros's home.

Appellant also asks this Court to substitute its judgment on credibility for that of the fact-finder in this matter, the Administrative Law Court. Sitting as a fact-finder, the ALC weighs evidence and determines witness credibility. *DIRECTV, Inc. v. S.C. Dep't of Revenue,* 421 S.C. 59, 81 (Ct.App. 2017).

The Appellant offers speculation to support its position on the facts in this matter. The ALC used substantial evidence. Under this Court's standard of review, the ALC position prevails. *Risher v. S.C. Dep't of Health & Envtl. Control,* 393 S.C. 198, 210 (2011).

IV. SUBSTANTIAL EVIDENCE SUPPORTED THE ADMINISTRATIVE LAW COURT'S DECISION THE TAXPAYER'S APPEAL IN THIS CASE WAS WITHIN THE PROPER TIME PERIOD.

The Appellant argues any taxpayer could claim they did not receive a notice of assessment and then manipulate the deadline for appealing that notice. This argument continues to disregard the ALC's order in this matter. The ALC did not take Dr. Tadros's testimony as the sole reason for its ruling. It was also based on the tracking evidence presented by the Appellant.

The ALC was free to assign whatever credibility it wanted to Dr. Tadros's testimony. As the fact-finder, it was the ALC's role to assess the credibility of witnesses. *Maull v. S.C. Dep't of Health & Envtl. Control,* 411 S.C. 349, 359 (Ct.App. 2015).

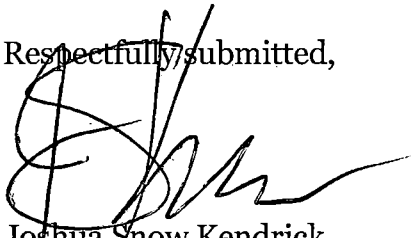
The ALC did not find that Dr. Tadros was entitled to additional time to appeal his notice of assessment. It found his appeal was timely based on receipt of the notices. The Supreme Court has held appellate deadlines must be interpreted to run the deadline from receipt of a notice, not the decision. *Hamm v. South Carolina Public Service Com.,* 287 S.C. 180, 181-82 (1985).

The ALC correctly ruled Dr. Tadro's appeal of the notice of assessment was timely.

CONCLUSION

The ALC reached a correct decision on the evidence and testimony presented. Because substantial evidence supported the decision, this Court should affirm the ALC's decision.

Respectfully submitted,



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June 21, 2018
Columbia, South Carolina

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CERTIFICATE OF SERVICE

The Initial Brief and Designation of Matter in this case were served by U.S. Postal Service this 21st day of June, 2018 to the following address:

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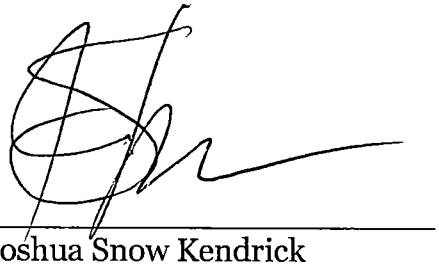

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