THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

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SC Court of Appeals

Wayne's Automotive Center, Inc., ... Appellant-Respondent,

v.

South Carolina Department of Public Safety, ... Respondent-Appellant.

INITIAL RESPONDENT'S BRIEF
OF RESPONDENT-APPELLANT

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TABLE OF CONTENTS

Table of Authorities iii

Statement of the Case 1

Standard of Review 4

Arguments 5

I. The Administrative Law Court was correct in rejecting the argument by Wayne's Automotive that its "settlement" of the disputed towing invoice with Premier Transportation precludes or moots the investigation and disciplinary action initiated by SCDPS. 5

II. The findings of fact and conclusions of law by the ALC that supported its determination that disciplinary action was warranted are fully supported by substantial evidence in the record as a whole 7

III. The Administrative Law Court was correct in concluding that Wayne's Automotive is subject to the South Carolina regulatory scheme that resulted in its call and acceptance of this towing/recovery operation 12

IV. The Administrative Law Court correctly ruled that any procedural issues with the agency-level appeals process were rendered harmless by the de novo hearing held in the Administrative Law Court 14

V. The violations committed by Wayne's Automotive, as found by the Administrative Law Court, are fully support by the evidentiary record 19

VI. In Sections V and VI of its brief, Wayne's Automotive fails to directly state or discuss any issues for appeal with the requisite detail and supporting authority so as to allow for SCDPS to properly respond 21

Conclusion 23

TABLE OF AUTHORITIES

Cases

Ellie, Inc. v. Miccichi,
358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004).

Fields v. Melrose Limited Partnership,
312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

Glasscock, Inc. v. United States Fidelity & Guaranty Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

In re Vora,
354 S.C. 590, 582 S.E.2d 413 (2003).

I'On v. Town of Mt. Pleasant,
338 S.C. 406, 526 S.E.2d 716 (2000).

James v. Fast Fare, Inc.,
685 F.Supp. 565 (D.S.C. 1988).

Jones v. Lott,
387 S.C. 339, 692 S.E.2d 900 (2010).

McCall v. Finley,
294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987).

Ross v. Medical University of South Carolina,
328 S.C. 51, 492 S.E.2d 62 (1997).

Tall Tower, Inc. v. South Carolina Procurement Review Panel,
294 S.C. 225, 363 S.E.2d 683 (1987).

Unisys Corp. v. South Carolina Budget & Control Board,
346 S.C. 58, 551 S.E.2d 263 (2001).

Statutes

S.C. Code Ann. § 1-23-330.

S.C. Code Ann. § 1-23-600.

S.C. Code Ann. § 1-23-610(B).

S.C. Code of Regulations R. 38-600.

S.C. Code of Regulations R. 38-600(C)(15).

S.C. Code of Regulations R. 38-600(D)(5).

STATEMENT OF THE CASE

This is an appeal from a contested case hearing and Final Order issued by the South Carolina Administrative Law Court.

The Appellant-Respondent Wayne's Automotive Center ("Wayne's") operates a wrecker service in Aiken, South Carolina. By letter dated April 25, 2016, the South Carolina Highway Patrol, which is a division of the Respondent-Appellant South Carolina Department of Public Safety ("SCDPS"), notified Wayne's of a proposed disciplinary action arising out of a towing operation performed on February 9, 2016, when a tractor-trailer owned by J.H.O.C., Inc. d/b/a Premier Transportation ("Premier") overturned on the I-20 bridge over the Savannah River near the South Carolina-Georgia border. Wayne's was on the Wrecker Rotation List that is maintained by the Highway Patrol. Wayne's received the rotation call on February 9, 2016, which it accepted.

On February 10, 2016, Wayne's issued an invoice to Premier for the tow and clean-up totaling $69,017.19. (Petitioner Exhibit 6). Robert Watson of Recovery Resolution Specialists was retained by Premier and its insurer, Sentry Insurance Company, to review the tow invoice. As part of his work, Watson made a complaint on behalf of Premier to Lt. Nichlous King, who was the wrecker coordinator for Troop 7 of the Highway Patrol. Lt. King conducted an investigation into the complaint which included contacts with Jeffrey Corbett, a

principal of Wayne's, to discuss the charges on the invoice and the release of the cargo of dog food.

As a result of that investigation, a Notice of Proposed Disciplinary Action signed by Captain A.K. Grice was sent to Wayne's notifying it that the Highway Patrol had determined that violations of the applicable regulations, as codified at Section 38-600 of the South Carolina of State Regulations, had occurred. In addition, the Highway Patrol had determined that Wayne's had violated Section 56-5-5635(F) of the South Carolina Code of Laws by its failure to timely release the cargo of dog food.

Wayne's requested and received a hearing from SCDPS on August 8, 2016. Thereafter, a Notice of Disciplinary Action Decision was issued on September 26, 2016, whereby SCDPS imposed the suspension and removal from the Wrecker Rotation List for a period of 120 days as a disciplinary sanction. An appeal was filed with Colonel Michael R. Oliver who upheld the decision.

Wayne's then sought a contested case hearing in the Administrative Law Court. An evidentiary hearing was held on July 31, 2017 and August 1, 2017 before Judge H.W. Funderburk, Jr.

By Final Order issued September 19, 2017, Judge Funderburk ordered Wayne's to be suspended and removed from the Wrecker Rotation List for a period

of sixty days. The parties both filed motions for reconsideration that were denied by Order filed October 31, 2017.

Wayne's subsequently filed a Notice of Appeal with this Court. SCDPS filed a cross-appeal only to preserve and assert its position on certain legal and factual errors that are discussed in its Appellant's Brief and Reply Brief.

STANDARD OF REVIEW

The standard of review for an appeal from an order by the Administrative Law Court in a contested case is controlled by S.C. Code Ann. § 1-23-610(B), which provides as follows:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B).

ARGUMENTS

I. The Administrative Law Court was correct in rejecting the argument by Wayne's Automotive that its "settlement" of the disputed towing invoice with Premier Transportation precludes or moots the investigation and disciplinary action initiated by SCDPS.

As an initial issue on appeal, the Appellant-Respondent Wayne's Automotive Center argues that it fully resolved the towing invoice with Premier Transportation when payment of the final, revised invoice was made, and that should have precluded or mooted the investigation and disciplinary action initiated by SCDPS. The ALC correctly rejected that argument.

For starters, the testimony shows that there is some dispute of fact as to whether the payment of $48,633.19 by Premier Transportation on March 4, 2016 was a final resolution of the dispute between Wayne's and Premier. Watson sent an email on March 7, 2016, saying "Complaint is still on." (Respondent Exhibit #8). But that is not the relevant inquiry. Any resolution of the underlying towing invoice does not make the SCDPS investigation moot. In essence, it does not negate the conduct by Wayne's that precipitated the investigation and disciplinary action in the first place or a review of the final, revised invoice, as was undertaken by the ALC.

An instructive analogy may be drawn to a typical scenario involving the utterance of a fraudulent check. South Carolina law recognizes that payment of the bad check to the merchant within a fifteen day "grace period" period provided by statute "does not prevent a prosecution for issuing a fraudulent check." *James v. Fast Fare, Inc.*, 685 F.Supp. 565, 567 (D.S.C. 1988). Thus, payment of the fraudulent check does not preclude criminal prosecution.

Likewise, where there is misconduct by a towing company, including a failure to comply with S.C. Code of Regulations R. 38-600 as well as overcharges and double-billing, as found as fact by the ALC, Wayne's subsequent release of the cargo and submittal of a revised bill does not insulate the company from the investigation and disciplinary duties of SCDPS. In short, a resolution of the towing invoice with Premier, even if that is supported by the evidence, does not moot the investigation and the ensuing disciplinary action taken by SCDPS.

Moreover, any suggestion that the "post-settlement" investigation and disciplinary action taken by SCDPS violates the Contracts Clauses of the United States and South Carolina Constitutions is legally frivolous. The same is true for any suggestion that the Orders issued by the ALC are unconstitutional on the same

basis. At any rate those constitutional arguments were not raised to nor ruled upon by the ALC and, as a result, are not even preserved for appellate review.[1]

II. The findings of fact and conclusions of law by the ALC that supported its determination that disciplinary action was warranted are fully supported by substantial evidence in the record as a whole.

The various arguments contained in Section I of Wayne's Appellant's Brief are largely convoluted and at times difficult to follow. It is unclear whether Wayne's actually challenges the factual foundation for the ALC's ultimate conclusion that Wayne's conduct warranted the 60-day suspension and removal from the Wrecker Rotation List. In Section I.E of the brief, it appears that Wayne's may be making that challenge because it discusses evidence offered by Wayne's that various expenses were reasonable. Nonetheless, the ALC found that certain expenses were not reasonable and violated the applicable regulations, and that conclusion is supported by substantial evidence in the record and must be affirmed under the applicable standard of review.

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[1] The South Carolina Supreme Court has repeatedly stressed "the long-established preservation requirement that the [appealing] party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004).

To recap, the ALC found that "there remain regulatory violations that are common to the invoice [SCDPS] investigated and the final invoice for which [Wayne's] is held responsible." (Final Order, p. 9). The ALC ruled that Wayne's "violated its obligations under S.C. Code Regs. 38-600 and the Schedule by double billing for labor, overcharging for rented/subcontracted equipment and labor, and failing to prove the actual costs of rented/subcontracted equipment and labor by not attaching itemized invoices or receipts to its tow bill." (Final Order, p. 10). The ALC concluded that "[t]hese violations warrant a suspension and removal of [Wayne's] from the Wrecker Rotation list for a period of sixty (60) days." (Final Order, p. 10).

In particular, the ALC determined that "the final bill retains 'double-billing' for individuals whose labor should have been included in the hourly rate for the heavy-duty wreckers (the Rotator and the Class C Heavy Duty Truck)." (Final Order, p. 10). That finding is supported by the evidence. Sherry Corbett of Wayne's, in fact, testified that each heavy-duty vehicle (wrecker and rotator) which were billed at $436 per hour comes with one operator (called a "recovery technician" on the invoices). KJ (Kevin Johnson) and BR (Brian Robbins) were tied to the wrecker and rotator, but their labor was double billed for 21 hours and 8 hours respectively. Sherry Corbett conceded that the billing of hours for KJ and BR was an

improper charge. (Tr. 213-217). That double-billing remained on the final invoice paid by Premier Transportation. (Respondent Exhibit #24).

The ALC also found that Wayne's "admitted 'marking-up' rental/subcontracted equipment and labor." (Final Order, p. 10). The ALC further explained that "[a] wrecker service may recover only the actual cost of such equipment or labor and must prove these actual costs by attaching an itemized invoice or receipt from the provider(s) to the invoice presented." (Final Order, p. 10). Thus, "by increasing these costs on the invoice and failing to attach proof of the costs, [Wayne's] violated the Wrecker Rotation Fee Schedule." (Final Order, p. 10). The record supports this finding as well. Sherry Corbett testified that Wayne's generally marked-up the labor costs from third-party contractors, including in this case the labor costs charged by Vern's Wrecker and Recovery. (Tr. 195-198).

In short, the double-billing for certain labor costs and the overcharges for rented/subcontracted equipment and labor, as found by the ALC, are supported by substantial evidence in the record. That factual basis supports the ALC's conclusion that those violations warranted the disciplinary action that the Court imposed.

Furthermore, the ALC found that Wayne's failed to comply with the requirement that invoices be attached to the towing bill for the equipment and labor provided by any third-party contractor. As indicated, there was finding by the ALC that equipment and labor were provided on the job by Vern's Wrecker and

Recovery and also by South Carolina Incident Management (SCIM), which is a separate company also owned by the Corbetts. (Final Order, p. 3). The 2016 Wrecker Rotation Fee Schedule provides that "a wrecker service may recover the *actual cost* of rented/subcontracted equipment or labor necessary to accomplish the job. Proof of those actual costs in the form of an itemized invoice or receipt from the third party providing such equipment or labor *must accompany the tow bill.*" (Emphasis added). (R. __). The ALC concluded that this requirement was violated because "the 'third party' charges were not supported by bills or receipts attached to the invoice." (Final Order, p. 3).

Wayne's previously argued that the requirement of "an itemized invoice or receipt from the third party" violates S.C. Code of Regulations R. 38-600(C)(15), which states: "Only one bill is to be submitted to the owner or operator for the work performed." Thus, by requiring "an itemized invoice or receipt from the third party" to reflect the "actual cost," Wayne's claimed that SCDPS was requiring it to actually violate S.C. Code of Regulations R. 38-600(C)(15). It is frankly unclear whether that argument is being pursued on appeal. However, to the extent it is, the ALC correctly rejected that argument:

> One bill is required to be submitted to the owner or operator. The Fee Schedule allows the towing company to include in its bill and recover the actual cost of rented or subcontracted equipment or labor. However, these costs must be substantiated by including with the single

> towing bill an itemized invoice or receipt from the third party that furnished such equipment or labor.

(Final Order, p. 6). This ruling is supported by the record. Lt. King testified that S.C. Code of Regulations R. 38-600(C)(15) is intended only to prevent the consumer from being sent multiple billings directly from multiple vendors. Instead, only one tow bill is to be sent to the consumer. However, that one tow bill should be "accompanied" by "an itemized invoice or receipt" from each third-party contractor that provided equipment or labor. (Tr. 172-174). Note that the pertinent language in the 2016 Wrecker Rotation Fee Schedule refers to "tow bill" in the singular and thus is entirely consistent with the requirements of S.C. Code of Regulations R. 38-600(C)(15). (R. __).

In short, SCDPS, through several requests from Lt. King, asked Wayne's to provide "an itemized invoice or receipt" from each third-party contractor that provided equipment or labor. That requirement was consistent with both the 2016 Wrecker Rotation Fee Schedule and S.C. Code of Regulations R. 38-600(C)(15). Wayne's had no right or option to refuse to comply with that requirement and has been appropriately subject to disciplinary action for its ultimate and repeated refusal to provide the requested documentation. In fact, even with the final, revised invoice, which was ultimately paid by Premier Transportation, Wayne's had still not broken out the equipment and labor costs from third party contractors such as Vern's Wrecker and Recovery and SCIM in separate invoices.

In sum, the findings of fact and conclusions of law by the ALC that supported its determination that disciplinary action was warranted are fully supported by substantial evidence in the record as a whole. The ALC's imposition of a 60-day suspension and removal from the Wrecker Rotation List should be affirmed.

III. The Administrative Law Court was correct in concluding that Wayne's Automotive is subject to the South Carolina regulatory scheme that resulted in its call and acceptance of this towing/recovery operation.

Wayne's further argues on appeal that the ALC erred in finding that South Carolina law, and specifically S.C. Code of Regulations R. 38-600, is applicable because the accident occurred in Georgia rather than South Carolina. Wayne's contends, in essence, that the towing/recovery operation took place in Georgia, and as a result, the SCDPS does not have the authority to investigate and impose discipline for events that occurred in Georgia. On this particular issue, the ALC ruled as follows:

> Petitioner asserts that the accident occurred in Georgia and is subject to Georgia law or is preempted by Federal law. This case arises within a South Carolina regulatory scheme in which a South Carolina business participating in that regulatory scheme was summoned by the South Carolina Highway Patrol to perform services subject to the administration of that regulatory scheme. Under these circumstances, South Carolina jurisdiction is proper.

(Final Order, p. 4). That ruling is correct and should be affirmed.

The evidence in the record reflects that the accident at issue occurred on the I-20 westbound bridge over the Savannah River. The South Carolina-Georgia boundary is located somewhere in the middle of river and is not delineated specifically by signage on the bridge. The evidence presented did not clearly reflect whether the tractor-trailer came to a rest in South Carolina, Georgia or both (i.e., straddling the state line). The evidence did reflect, however, that bridge was closed in South Carolina, that Wayne's had at least some of its equipment and crew on the South Carolina side of the bridge, and the trailer was towed and unloaded on the side of the interstate in South Carolina according to Jeff Corbett's testimony and the photographs entered into evidence. In addition, Lt. King testified that the accident occurred in South Carolina, that the Premier Transportation driver was charged with a violation of South Carolina law, and that the driver was convicted in a South Carolina court. Thus, the accident itself fell under South Carolina jurisdiction, and SCDPS had responsibility for initiating the towing/recovery operation that ensued as a result.

Importantly, there is no dispute that Wayne's responded to a South Carolina Highway Patrol Wrecker Rotation List call, which gives SCDPS the requisite "jurisdiction" or authority to review any complaints regarding that towing operation. As already mentioned, a substantial portion of the towing operation, including the unloading of the trailer, occurred in South Carolina. The cargo was

also stored in South Carolina, and the failure to timely release the cargo occurred in South Carolina and is governed by South Carolina law because that is where the storage occurred.

In sum, Wayne's argument that SCDPS had no "jurisdiction" or authority to investigate this towing operation/incident is patently without merit. The ALC was correct in concluding that Wayne's is subject to the South Carolina regulatory scheme that resulted in its call and acceptance of this towing/recovery operation.

IV. The Administrative Law Court correctly ruled that any procedural issues with the agency-level appeals process were rendered harmless by the *de novo* hearing held in the Administrative Law Court.

In its brief, Wayne's also complains that SCDPS failed to utilize an advisory committee as part of the agency-level appeals process thereby violating Wayne's due process rights. As part of the section captioned "Complaints/Disciplinary Procedures," S.C. Code of Regulations R. 38-600 provides as follows for a review in certain circumstances by an advisory committee:

> An advisory committee, consisting of experts in the towing and towing related industries, will be created to review, upon request by the Department, complaints specific to the terms and conditions of this regulation. The advisory committee will be limited to reviewing specific issues raised in a complaint or appeal and making recommendations regarding the validity of the complaint as well as a fair and reasonable resolution. Advisory committee recommendations will not supercede

> [sic] Department of Public Safety policy nor will the committee make recommendations regarding disciplinary action for Department of Public Safety employees.

S.C. Code of Regulations R. 38-600(D)(5). In addition, the SCDPS Wrecker Rotation Disciplinary Policy provides that, upon an appeal to the Patrol Commander, the Commander "shall request that the advisory committee review the appeal and make recommendations before making a final decision." SCDPS Policy Number 200.19, ¶ IV.E. During the agency-level process, an appeal was made by Wayne's to Colonel Michael Oliver who issued a final decision upholding the disciplinary action without first seeking a review and recommendation from an advisory committee. Wayne's contends that this violated its due process rights.

On this issue, the ALC ruled as follows:

> Petitioner also complains about the Department's failure to refer the case to an Advisory Committee. S.C. Code Ann. Regs. 38-600(D)(5) mandates the creation of an Advisory Committee "to review ... complaint specific to the terms and conditions of this regulation." Petitioner complains that Respondent violated the regulation by not creating this Advisory Committee. However, the review referenced could only occur "upon request by the Department." Furthermore, its review would be limited to "specific issues raised in a complaint or appeal," and its recommendations regarding the validity of the complaint as well as a fair and reasonable resolution" cannot "supercede [sic] Department of Public Safety policy." Hence, while the Department may have erred in failing to create an Advisory Committee, it is not obligated to use the committee or to follow its recommendations. *In any event, the contested case hearing and its de novo review has cured any procedural*

> *or due process violations. Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001). Therefore, this error, if it is an error, is harmless.

(Final Order, pp. 5-6). (Emphasis added). That ruling is correct and should be affirmed.

Even assuming that Colonel Oliver erred in failing to seek the review and recommendations of an advisory committee, that error has not resulted in Wayne's being deprived of due process. The law on this issue is well settled.

The leading case is *Unisys Corp. v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001), which was a procurement case. The plaintiff in that case asserted a violation of due process based upon a lack of "established procedures" for the hearing before a chief procurement officer (CPO). In rejecting that argument, the South Carolina Supreme Court explained that the plaintiff was able to seek a *de novo* review of the CPO's decision before the Procurement Review Panel. Specifically, the Supreme Court held that "[a]n adequate *de novo* review renders harmless a procedural due process violation based on the sufficiency of the lower administrative body." 551 S.E.2d at 272. In finding no due process violation based upon the *de novo* review by the Procurement Review Panel, the Supreme Court explained as follows:

> In this case, the procedure set forth by the Review Panel provides for representation by counsel, opening statements, the presentation of evidence, direct, cross, re-

> direct, and re-cross examination of witnesses, and closing statements. The complaining party presents its case first and bears the burden of proof. The Review Panel may receive additional evidence although issues are generally limited to those presented to the CPO. Since this proceeding meets due process requirements and is *de novo,* Unisys can show no substantial prejudice from the lack of an established procedure before the CPO.

Id. See also, *Ross v. Medical University of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997) (administrator's lack of impartiality cured by *de novo* review before impartial panel); *In re Vora*, 354 S.C. 590, 582 S.E.2d 413, 416 (2003) ("[g]iven the complete and independent review by the Appellate Review Committee, we find any alleged inappropriate burden at earlier stages was harmless").

It is well settled that "[a] demonstration of substantial prejudice is required to establish a due process claim." *Tall Tower, Inc. v. South Carolina Procurement Review Panel*, 294 S.C. 225, 363 S.E.2d 683, 687 (1987). In addition, "[p]rocedural due process requirements are not technical; no particular form of procedure is necessary." *In re Vora*, 354 S.C. 590, 582 S.E.2d 413, 416 (2003). Due process typically requires "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Id.*

In the case at bar, Wayne's did not seek the appellate review of a final agency decision by SCDPS in the ALC. Rather, Wayne's brought a contested case

in the ALC. The ALC ruled early in the process that "this case is properly before this Court as a Contested Case pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2016) and 1-23-505 (Supp. 2016)." (Order filed 01-27-17, p. 1). The procedures for a contested case in the ALC fully comport with the requirements of due process. *See*, S.C. Code Ann. §§ 1-23-600, 1-23-330.

The record in this case also supports the conclusion that Wayne's received a proper and adequate *de novo* hearing in the ALC. Prior to the evidentiary hearing, Wayne's conducted discovery including the taking of depositions. In addition, the ALC placed the burden of proof on SCDPS and allowed a full trial including opening statements, the introduction of evidence, the presentation of lay and expert witnesses including direct and cross examinations, and full post-hearing briefing of the issues and evidence. In short, there is no dispute that Wayne's received in the ALC a proper and adequate *de novo* review of the disciplinary action taken by SCDPS. The ALC's hearing is consistent with the procedure found by the Supreme Court in *Unisys* to constitute an adequate *de novo* review which in turn rendered harmless procedural deficiencies in a lower administrative body.

Consequently, as the ALC correctly ruled, the failure of Colonel Oliver to seek the review and recommendations of an advisory committee at the agency

level is, at worst, harmless error. Wayne's has certainly not made the requisite showing of substantial prejudice to demonstrate a violation of due process.[2]

V. The violations committed by Wayne's Automotive, as found by the Administrative Law Court, are fully support by the evidentiary record.

In Section IV of its Appellant's Brief, Wayne's appears to argue initially that the ALC was "inconsistent" in evaluating the reasonableness of only the final, revised invoice in the amount of $48,633.19 as submitted by Wayne's and then concluding a 60-day suspension was warranted. Wayne's appears to disregard, however, that the ALC found that "there remain regulatory violations that are common to the invoice [SCDPS] investigated and the final invoice for which [Wayne's] is held responsible." (Final Order, p. 9). The ALC ruled that Wayne's "violated its obligations under S.C. Code Regs. 38-600 and the Schedule by double billing for labor, overcharging for rented/subcontracted equipment and labor, and failing to prove the actual costs of rented/subcontracted equipment and labor by not attaching itemized invoices or receipts to its tow bill." (Final Order, p. 10). The ALC concluded that "[t]hese violations warrant a suspension and removal of [Wayne's] from the Wrecker Rotation list for a period of sixty (60) days." (Final

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[2] As former Chief Judge Alex Sanders once wrote, "[a]ppellate courts recognize – or at least they should recognize – an overriding rule of civil procedure which says: whatever

Order, p. 10). As discussed above, these findings of fact and conclusions of law are fully supported by the record. There is no "inconsistency" in the ALC's ruling as appears to be alleged.

Moreover, in the remainder of Section IV of its Appellant's Brief, Wayne's appears to raise other issues in a purely conclusory manner. This Court has repeatedly explained that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001). Wayne's sets out a list of apparent issues delineated as (a) through (f), but then never discusses those issues nor provides any supporting authority. *See*, Wayne's Appellant's Brief, p. 25. Those issues, at any rate, do not show that the ALC's findings of fact related to the violations found are clearly erroneous or unsupported by substantial evidence.

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doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987).

VI. In Sections V and VI of its brief, Wayne's Automotive fails to directly state or discuss any issues for appeal with the requisite detail and supporting authority so as to allow for SCDPS to properly respond.

In Section V of its Appellant's Brief, Wayne's again appears to raise a number of evidentiary issues in a very conclusory manner, which is not permissible under *Field* and *Glasscock*, as discussed above. After reprinting a lengthy citation to the ALC Final Order, Wayne's then raises what it terms "examples of the Administrative Law Court's misconstruction of evidence" but then fails to specify even those "examples" in any coherent way. In extremely general terms, Wayne's complains of "limitations unduly placed on the scope of testimony by witnesses for Petitioner" and "related offers of proof." *See*, Wayne's Appellant's Brief, p. 27. Likewise, the caption for Section V of the brief makes mention of "limiting expert testimony," but then there is no discussion of any such rulings that placed limitations of expert testimony.

Similarly, in Section VI of its Appellant's Brief, Wayne's again makes a short, conclusory argument that actually fails to state any error made by the ALC. Wayne's appears to argue that SCDPS has employed "unlawful binding norms" and then uses a footnote to give examples. The conclusory statements in the footnote do not appear to address "binding norms" at all but rather reiterate other issues that were stated in a conclusory and rather incoherent fashion in earlier portions of the brief.

In sum, Wayne's failure to discuss such issues in any detail whatsoever makes it impossible for SCDPS to properly respond or for this Court to properly adjudicate any such evidentiary issues.[3]

[3] In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), the Supreme Court explained that "broad general statements of issues may be disregarded by this Court." 692 S.E.2d at 903. The Supreme Court reaffirmed the well-established rule of appellate law that "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." *Id.* Likewise, the Court reiterated that "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Id.*

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent-Appellant South Carolina Department of Public Safety respectfully requests that this Court affirm the suspension and removal of Wayne's Automotive from the Wrecker Rotation List.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

Wayne's Automotive Center, Inc., ... Appellant-Respondent,

v.

South Carolina Department of Public Safety, ... Respondent-Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondent-Appellant South Carolina Department of Public Safety, does hereby certify that service of the **Initial Respondent's Brief of Respondent-Appellant** and **Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 5th day of July 2018:

Raymon E. Lark, Jr., Esquire
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, South Carolina 29211

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JUL 09 2018
SC Court of Appeals

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July 5, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: Wayne's Automotive Center, Inc. v. South Carolina Department of Public Safety
Appellate Case Number: 2017-002455
ALC Docket Number: 16-ALJ-30-0410-CC
Our File Number: 107.10114

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Respondent's Brief of Respondent-Appellant** and **Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Raymon E. Lark, Jr., Esquire *(w/ Enclosures)*
Marcus K. Gore, Esquire *(w/ Enclosures)*

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The Honorable Jenny Abbott Kitchings
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