

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTORS LICENSING BOARD

Honorable Ralph King Anderson, III
Chief Administrative Law Judge

RECEIVED
AUG 02 2018
SC Court of Appeals

APPELLATE CASE NUMBER 2017-001311

N. Bobby Knight & Construction Group, LLC, ... Appellants

v.

South Carolina Department of Labor, Licensing and Regulation,
South Carolina Contractors Licensing Board Respondent

RECORD ON APPEAL - SUPPLEMENT

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

N. Bobby Knight and Construction Group,
LLC,

Appellants,

vs.

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

Respondent.

MOTION TO DISMISS

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

FILED

APR 18 2017

SC ADMIN LAW COURT

Respondent, South Carolina Department of Labor, Licensing and Regulation, South Carolina Contractor's Licensing Board (hereinafter "the Board"), pursuant to SCALC Rule 38, moves this Court to dismiss Appellants' appeal. Specifically, this Court should dismiss Appellants' appeal for the following reasons: (1) Appellants have failed to comply with the applicable court rules, specifically SCALC Rule (8)(A); (2) Appellants have failed to comply with the Court's February 6, 2017 Order; and (3) Appellants cannot raise issues for the first time on appeal.

In support of its Motion, Respondent shows the following to the Court:

1. Appellants are in violation of SCALC Rule 8(A).

SCALC Rule 38 provides that "[u]pon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court."¹

¹ SCALC Rule 8(A) is encompassed within the rules of procedure for appeals, as it is included in subsection 1 of the SCALC Rules, entitled "General Provisions," which apply to both contested case hearings as well as appeals from administrative agencies. Accordingly, violation of any of the rules in subsection 1 of the SCALC Rules, in addition to SCALC Rules 33 through 41, would be grounds for dismissal pursuant to SCALC Rule 38.

Additionally, the 2014 Revised Notes to SCALC Rule 38 further provides that "[i]n all cases involving ~~pro se~~ litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes." In addition to the SCALC Rules, the South Carolina Court of Appeals has also clarified that pro se litigants are responsible for complying with the requirements of legal proceedings. See *Goodson v. Am. Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.")

SCALC Rule 8(A) specifically provides that, other than for OSHA cases, "[a]ny party which is not a natural person must be represented by an attorney." Further, the Notes to 2016 Amendments for SCALC Rule 8 provide that Rule 8(A) was "amended to clarify that any party which is not a natural person, such as corporations, partnerships, and other *business entities*, must be represented by an attorney in proceedings before the Court." (emphasis added). Construction Group, LLC, the licensed entity, is a business entity by virtue of being an LLC, and is not a natural person. Accordingly, an attorney *must* represent Appellants in this proceeding, as required by SCALC Rule 8(A).

In the present appeal, Appellants submitted their Brief, which includes thirteen separate issues on appeal, without identifying an attorney. (Cover of Appellants' Br. and Appellants' Br. p. 27). With respect to this issue, Appellants provide the following as to why their compliance with SCALC Rule 8(A) is not required:

APPELLANT'S NOTE No. 2: The question as to SC-ALC Rule 8A that Construction Group, LLC must hire an attorney to be heard &c. that Appellant Knight would have the money to hire some attorney for this business had the copper not been admittedly stolen by SCLLR-CLB Board Member Legrand Richardson, Jr. -- which is a paradox as [i]f Richardson, Jr., as owner of Atlantic Electric, had not stolen the copper in the first place -

then - most likely this contract dispute would not now be ongoing since February 2011. AS of 'court like' administrative law is entitled to judicial review, yet attorneys are required for Construction Group LLC - then the Formal Complaint process warrants a Summons to attach Personal Jurisdiction to this non-separable matter. Construction Group LLC has become a frozen entity since the theft and fraud at the District Court by Atlantic and its att[orney].

(Appellants' Br. p. 8.)²

Appellants' above-quoted response does not alleviate them of the responsibility to have an attorney represent them before this Court as required by SCALC Rule 8(A). The Court has made reasonable efforts, as will be further discussed in Section 2, to assure fairness. However, Appellants still remain responsible for complying with the applicable court rules.

2. Appellants are in violation of the Court's January 24, 2017 letter as well as the Court's February 6, 2017 Order.

On January 4, 2017, E. Harvin Belser Fair, Judicial Law Clerk to the Honorable Ralph King Anderson, III, mailed a letter to Mr. Knight of Appellants that provided that "it has come to the Court's attention that Construction Group, LLC, is not represented by an attorney in this matter." (R p. 127). In the letter, Ms. Fair explained that SCALC Rule 8(A) was amended on or about April 30, 2009, to prohibit the unauthorized practice of law in South Carolina, and she stated that SCALC Rule 8(A) requires that an attorney admitted to practice in South Carolina must represent an entity party, like Construction Group, LLC, before this Court. (R. p. 127).

On or about January 16, 2017, Appellants filed a Notice and Motion to Correct or Amend Case Caption. (R. p. 147). Following, Respondent submitted its own Motion to Deny Appellants' Motion to Correct or Amend Caption on January 27, 2017. (R. pp. 149-51). Appellants then submitted two replies, one original reply and one amended reply, to Respondent's Motion. (R. pp. 152-62).

² This excerpt from Appellants' Brief, p. 8, is reproduced here verbatim and with the same formatting Appellants provided in their brief.

On February 6, 2017, the Court issued an Order regarding the aforementioned motions. (R. pp. 163–68). In its Order, the Court denied Appellants' Motion to Correct or Amend Caption, finding that the current appeal pertains to not only sanctions against the qualified party certificate issued to Mr. Knight and fines imposed against him, "but also to the sanctions imposed against the license issued to Construction Group, LLC and the fines imposed upon it. Therefore, this appeal must proceed with the current licensee, the LLC, as an appellant, not just Mr. Knight." (R. p. 165).

After examining the language of SCALC Rule 8(A) and the accompanying Notes to 2016 Amendments, the Court explained that "an LLC qualifies as an 'other business entit[y]' for purposes of SCALC Rule 8(A). Therefore, an attorney can and must represent an LLC before this Court. Otherwise, the Court will not entertain any arguments on its behalf." (R. p. 164).

Finally, in addressing Respondent's request for an extension to file the Record on Appeal, the Court granted Respondent's request for the extension, without regard to Appellants' compliance with SCALC Rule 8(A), because Appellants' brief was not due until thirty days following the filing of the Record on Appeal and Appellants may have retained counsel by the time their brief became due. (R. p. 166). The Court then continued to explain "though the Court finds that Appellant LLC has thus far failed to comply with SCALC Rule 8(A) and *must, therefore retain counsel if it wishes to proceed on the appeal*, the Court will grant [Respondent's] request" (emphasis added).

Respondent filed the Record on Appeal on February 24, 2017. (R. p. 169) Appellants' Brief was then filed pro se on March 24, 2017, in direct violation of the Court's February 6, 2017 Order requiring Appellants to retain an attorney if they wish this appeal to go forward.

3. Appellants cannot raise issues for the first time on appeal.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Nicholson v. Nicholson*, 378 S.C. 523, 537, 663 S.E.2d 74, 82 (Cl. App. 2008). "It is well settled that . . . an appellate court cannot address an issue unless it was raised to, and ruled upon by, the trial court." *Smith v. Phillips*, 318 S.C. 453, 455, 458 S.E.2d 427, 429 (1995) (emphasis added).

An evidentiary hearing before a hearing officer appointed by the Board occurred on September 9, 2016. (R. pp. 46-72). This hearing took place pursuant to the Notice of Hearing and Formal Complaint that was mailed to Appellants at Appellants' address on file with the Board — 3940 Hottinger Avenue, Charleston, SC 29405. (R. p. 35). Importantly, this is the same mailing address that Appellants have used — and are still using — for this current appeal. (R. p. 169, Appellants' Br. Cover and Appellants' Br. p. 27).

Despite being properly noticed for this hearing, Appellants chose not to appear to make any arguments on their own behalf, and the hearing regarding undisclosed judgments occurred without Appellants present. (R. pp. 46-72).³

Following this evidentiary hearing, the Notice of Final Order Hearing was then mailed to Appellants, again at the same address. (R. pp. 36-43). The Final Order Hearing took place on October 20, 2016. (R. pp. 100-07). At the Final Order Hearing Appellants again failed to

³ During the evidentiary hearing, counsel for Respondent averred on the record that the Notice of Hearing and Formal Complaint were sent to Appellants, both regular mail and certified mail, to the address of record for Appellants: 3940 Hottinger Avenue, Charleston, SC, 29405. While the certified mail was not signed for, the notice by regular mail had not been returned. (R. pp. 50-51). Additionally, Ms. O'Linda Meck, the administrative assistant responsible for mailing the Notice of Hearing and Formal Complaint, testified that she sent the aforementioned documents to Appellants' address of record, via both regular and certified mail, on July 28, 2016. (R. pp. 69-72).

appear; thus, they did not make any arguments on their behalf. The Board adopted the Hearing Officer's Recommendation without modification. (R. pp. 104-106).

Appellants chose not to appear at either the initial September 2016 evidentiary hearing or the October 2016 Final Order Hearing, despite being properly noticed for both. In doing so, Appellants chose not to make any arguments on their behalf or provide any explanation to the hearing officer or the Board before they issued their recommendations and order, respectively. Appellants cannot on appeal now try to argue at least thirteen (13) separate issues on appeal that were never raised to or ruled upon by either the hearing officer or the full Board.⁴ To allow Appellants to do so would be in violation of well-settled precedent that an appellate court cannot determine whether the lower tribunal committed error when the lower tribunal was never made aware of any of the arguments suddenly before this Court now.

WHEREFORE, based on the aforementioned reasons, Respondent respectfully requests that Appellants' appeal be dismissed with prejudice and for other such relief as the court deems just and appropriate.

(Signature on following page)

⁴ The thirteen (13) issues on appeal identified by Appellants include the following: "(h) VENUE was not provided in Charleston County, the residence of Mr. Knight"; "(k) . . . the Takings Clause as it applies to SCLLR-CLB violating the Board's Online brochure 'How to file a complaint' See APPENDIX V, the yellow highlighted provisions"; and "(l) the Eight Amendment -- as the Board orders Mr. Knight to pay the GERGEL COURT when the Board has not the authority to invoke additional extensive, cruel and unusual punishment formed into a new sentence and burden attempting to enforce the District Court Order that will suffer an enrichment for the Board Member Legrand Richardson, Jr. - the admitted copper thief about the federal contract in question here." (Appellants' Br. pp. 1-2).

Respectfully Submitted,

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

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4/18, 2017

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTOR'S LICENSING BOARD

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

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

v.

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

CERTIFICATE OF SERVICE

I hereby certify that I am an Attorney for Respondent in the above-captioned matter and that on the 18th day of April, 2017, in Columbia, South Carolina, I served a copy of Respondent's Motion to Dismiss onto the Court and Appellants in this matter by hand delivery and by mailing, respectively, to the addresses as follows:

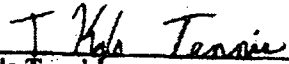
BY HAND DELIVERY

The Hon. Ralph King Anderson, III
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

BY MAILING

N. Bobby Knight and
Construction Group, LLC
3940 Hottinger Avenue
North Charleston, SC 29405
Appellants

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION


T. Kyle Tennis
Assistant Disciplinary Counsel
South Carolina Department of Labor,
Licensing and Regulation
Office of Disciplinary Counsel

Columbia, South Carolina
April 18th, 2017

FILED

APR 18 2017

SC ADMIN LAW COURT

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE CONTRACTORS' LICENSING BOARD**

In the Matter of:

CONSTRUCTION GROUP, LLC
License No.: CLG.103920 GC
License No.: CLM106217 MC

N. BOBBY KNIGHT
Credential NO.: CQG.14035

Respondents.

Case No.: 2015-5

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within Memorandum of Agreement and Stipulation of Facts, Formal Complaint and Notice of Hearing upon the person hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested and by regular first class mail, properly addressed to the said person hereafter named, at the place and address stated below, which is the last known address for the same:

Mr. N. Bobby Knight
Construction Group, LLC
3940 Hottinger Avenue
Charleston, SC 29405

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION
CONTRACTORS' LICENSING BOARD**

Linda S. Mack
O' Linda S. Mack, Administrative Assistant
LLR-Office of Disciplinary Counsel
Office of General Counsel
Post Office Box 11329
Columbia SC 29211-1329

July 28, 2016.

South Carolina Department of Labor, Licensing & Regulation

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

In the Matter of:

CONSTRUCTION GROUP LLC
CLG.103920

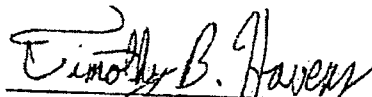
N. BOBBY KNIGHT
CQG.14035

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date, November 4, 2016, served the Final Order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s) to the following address:

CONSTRUCTION GROUP LLC
3940 HOTTINGER AVENUE
CHARLESTON SC 29405

N BOBBY KNIGHT
108 WILSON STREET
SUMMERVILLE SC 29483-6232



Tim Havens
Administrative Assistant
SC Department of Labor, Licensing
and Regulation

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTORS LICENSING BOARD

AUG 02 2018

SC Court of Appeals

Honorable Ralph King Anderson, III
Chief Administrative Law Judge

APPELLATE CASE NUMBER: 2017-001311

N. Bobby Knight & Construction Group, LLC,.....Appellants

v.

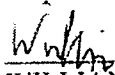
South Carolina Department of Labor, Licensing and Regulation,
South Carolina Contractor's Licensing Board.....Respondent

APPELLANT'S COUNSEL'S CERTIFICATION
AS TO THE RECORD ON APPEAL SUPPLEMENT

I certify that the Record on Appeal Supplement mailed to the Honorable South Carolina Court of Appeals in this matter contains no matter which is irrelevant to this appeal.

Respectfully submitted,

SWOPE LAW FIRM, P.A.


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May 24, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA CONTRACTORS LICENSING BOARD

Honorable Ralph King Anderson, III
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South Carolina Contractor's Licensing Board.....Respondent

CERTIFICATE OF SERVICE

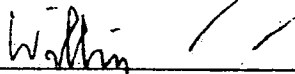
On this 24th day of May, 2018, I, William K. Swope, Esquire, of the Swope Law Firm, P.A.,
did hereby serve the Record on Appeal Supplement on the following:

The Hon. Jenny Abbot Kitchings
Clerk of Court
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