THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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

v.

Richland County Assessor,.....Appellant.

BRIEF OF APPELLANT

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A. Did the Administrative Law Court err as a matter of law in failing to rule that the mailing of the Notices of Assessment pursuant to S.C. Code Ann. § 12-60-2510(A)(1) and (3) (2014) is a ministerial/clerical duty and, as such, it is not an unauthorized delegation of authority to contract with a third party vendor to perform that duty?

B. Did the Administrative Law Court err as a matter of law in applying a literal interpretation of S.C. Code Ann. § 12-60-2510 (2014) requiring the Assessor to be the party physically mailing the assessment notices, thereby producing an absurd result not consistent with legislative intent?

II. Did the Administrative Law Court err as a matter of law in finding that the Notices of Assessment had not been served pursuant to S.C. Code Ann. § 12-60-2510(A)(2) (2014)?

III. Is the Administrative Law Court's finding that the Taxpayer did not receive the Notices of Assessment based upon the Taxpayer's testimony and the U.S. Postal Service's last scan in San Diego clearly erroneous in view of the reliable, probative and substantial evidence on the whole record?

IV. Did the Administrative Law Court err as a matter of law in that its holding extended and/or enlarged the time period for appeal prescribed by statute, and as such, was beyond the authority of the Court?

STATEMENT OF THE CASE

This lawsuit arises out of an attempt by the Respondent-Petitioner, Emad Tadros, M.D. (Taxpayer) to effect a property tax appeal of his property values for the 2015 tax year. The Richland County Assessor (Assessor) maintains that the Taxpayer's appeal was untimely because such was outside of the time frames established by S.C. Code Ann. § 12-60-2510(A)(3) (2014).

By way of background, the Taxpayer purchased two commercial condominium units in the Adesso Horizontal Property Regime located at 601 Main Street, Columbia, South Carolina, on or about December 5, 2014. The consideration listed on the deed for both units was $1,850,000. This transaction was an "assessable transfer of interest" pursuant to S.C. Code Ann. § 12-37-3150(A)(1) (2014). Accordingly, the Assessor revalued both parcels in accordance with S.C. Code Ann. § 12-37-3140(A)(1)(b) (2014). The Assessor valued Tax Map Number 11395-01-01 at $286,800 and Tax Map Number 11395-02-01 at $1,569,300. (R. pp. 30-32, lines 23-3; R. p. 128, lines 2-17; R. p. 136, lines 21-23)

A "Notice of Classification, Appraisal & Assessment of Real Estate" was placed in the mail on July 17, 2015 for each parcel as required by § 12-60-2510(A)(1) by the Assessor's third party mailing service. (R. p. 32, lines 10-11; R. p. 41, lines 13-19) Both notices were addressed to "Grace Living Trust, Emad Tadros MD Trustee," 13349 Caminito Mar Villa, Del Mar CA 92014. (R. p. 32, lines 10-14) By admission of the Taxpayer, this is the Taxpayer's correct mailing address. (R. p. 71, lines 11-22) The Assessment notices were not returned to the Assessor by the U.S. Postal Service as undeliverable. (R. p. 35, lines 7-14; R. pp. 46-47, lines 21-3) In addition, there were no

mailing issues that the Assessor's Office became aware of with regard to these assessment notices or others mailed at the same time. (R. p. 47, lines 4-11)

Richland County/the Assessor contracts with SI Solutions, a commercial mailing service, to mail its assessment notices by regular U.S. Mail. (R. p. 41, lines 13-19) Each assessment notice contains an IMb (Intelligent Mail barcode). This allows the U.S. Postal Service to automatically scan each notice as it is processed through the various postal facilities that have scan equipment. It does not provide proof of delivery but does provide evidence of the last automated processing before going out for delivery. Each scan produces the following information: (1) zip code of the postal facility conducting the scan; (2) the city in which the postal facility conducting the scan is located; (3) the state in which the postal facility conducting the scan is located; (4) date and time of the scan; (5) and the days, hours, and minutes since the last scan. (R. pp. 42-44, lines 2-20; R. pp. 187-189, Resp. Exh. 8)

With regard to the Assessment Notices sent to the Taxpayer, the U.S. Postal Service scans showed that SI Solutions placed the two assessment notices in the mail on July 17, 2015 at 1900 hours at a facility in the 29209 zip code area. The notices were then processed at a facility in Columbia in the 29201 zip code area on the same day, one hour and fifty-three minutes later. After two days and four hours and four additional scans (July 19, 2015), the notices made it to the last scan destination prior to delivery to the Taxpayer. This destination was in San Diego, California, approximately 20 miles from the Taxpayer's address in Del Mar, California. (R. pp. 43-44, lines 25-2; R. pp. 187-189, Resp. Exh. 8) The data summary for the IMb on the assessment notices correctly reflects the destination zip code as 92014-1349. This data summary further

reflects that the last scan was conducted on this mail on July 19, 2015 at 11:28 PM and that the assessment notices were "assumed delivered." (R. pp. 43-46, lines 19-20; R. pp. 187-189, Resp. Exh. 8)

The Taxpayer contends that he never received the assessment notices. He testified that San Diego is not his closest post office and not where he goes to pick up certified mail. (R. pp. 64-65, lines 7-3) He also attempted to dispute what he thought was the house number as stated on the tracking information. In cross examination, it was established that the number he was referring to was the zip code extension. (R. pp. 68-73 lines 20-5)

Pursuant to § 12-60-2510(A)(3), a taxpayer has 90 days from the date of mailing to file a notice of objection and such notice must be in writing to the Assessor's Office. Thus, the Taxpayer had until October 16, 2015 to file a notice of objection. The Assessor's Office had no communication with the Taxpayer by the October 16, 2015 deadline for filing an appeal. (R. p. 32, lines 10-18; R. pp. 34-35, lines 11-22; R. p. 180, Resp. Exh. 3; R. p. 181, Resp. Exh. 4)

On October 28, 2015, real property tax bills were mailed via a third party mailing service to the same address and were likewise addressed to "Grace Living Trust, Emad Tadros MD Trustee," 13349 Caminito Mar Villa, Del Mar CA 92014. (R. pp. 178-179, Resp. Exh. 2) The Taxpayer testified that he received the first one of these in January or February 2016. (R. p. 62, lines 1-4)

On March 10, 2016, approximately five months after the deadline for filing an appeal had expired, the Taxpayer telephoned the Richland County Auditor's Office to inquire about appealing his tax bills. (R. p. 35, lines 15-19) Section 12-60-2510(A)(3)

provides that a taxpayer may file a written objection to the fair market value, the special use value, the assessment ratio and the property tax assessment.

On March 14, 2016, the Taxpayer sent a letter to the Assessor's Office requesting that appeals be opened for both properties for tax year 2016 because the property was not worth the $1,850,000 he paid for it. This appeal was timely and met the requirements of § 12-60-2510(A)(3). Thus, the Assessor's Office complied with the request. (R. pp. 34-35, lines 11-6; R. p. 180, Resp. Exh. 3)

By letter dated April 18, 2016, addressed to Ms. Stacey Hamm, Deputy Treasurer for Richland County, the Taxpayer stated that he had not received his tax bills until February 2016 and would have paid his tax on time if he had received the bills earlier. He requested an appeal of his 2015 tax bill. (R. pp. 35-36, lines 20-11; R. p. 181, Resp. Exh. 4) In response to this letter, Ms. Hamm granted a refund of $5,200 in late payment penalties due to the flooding issues that occurred in South Carolina at that time. (R. p. 66, lines 1-6) Notably, the Taxpayer produced original copies of the tax bills that were mailed to him on October 28, 2014, not subsequent bills. (R. pp. 178-179, Resp. Exh. 2; R. pp. 36-37, lines 23-13)

By letter dated May 3, 2016, addressed to Terry Fancey of the Richland County Assessor's Office, the Taxpayer again requested that his 2015 tax bills be reduced. (R. p. 38, lines 5-25; R. pp. 182-183, Resp. Exh. 5) Liberally construing the Taxpayer's reference to appealing the tax bills to mean appealing the fair market value of his property as allowed by § 12-60-2510(A)(3), the Taxpayer's May 3, 2016 letter was the first written correspondence to the Assessor's Office that could be construed as an appeal of the 2015 tax year. (R. p. 39, lines 1-7) However, such was not a timely appeal and

was not considered by the Assessor. The Assessor's Office does not consider late appeals because to do such would be outside of their statutory authority. (R. p. 58, lines 8-16)

By letter of June 6, 2016, the Taxpayer requested a hearing before the Richland County Board of Assessment Appeals (the Board) based upon the Assessor's refusal to grant the Taxpayer's request for an appeal of his property taxes for the 2015 tax year. (R. pp. 39-40, lines 20-16; R. pp. 184-185, Resp. Exh. 6) A hearing was conducted on October 11, 2016. A decision was rendered on November 15, 2016 stating that the Taxpayer's Notice of Objection was untimely and affirming the Assessor's value. (R. pp. 40-41, lines 17-12; R. p. 186, Resp. Exh. 7) Thereafter, the Taxpayer timely appealed to the Administrative Law Court.

The matter was heard before the Honorable H. W. Funderburk, Jr., on November 7, 2017. Judge Funderburk issued a decision on the matter dated November 30, 2017, ruling that the Assessor's delivery of the assessment notice to a third party for mailing does not amount to service on the addressee, and citing Southbridge Properties, Inc. v. Jones, 291 S.C. 198, 355 S.E.2d 535 (1987), as authority. He further found that the tracking information furnished by the third party did not show delivery to the Taxpayer. Thus, the Taxpayer did not receive notices of the assessment and the appeal period did not start.

The Assessor filed a Motion for Reconsideration with the ALC on December 28, 2017 asserting (1) that the Assessor's procedures in contracting with a mailing service to mail out its assessment notices complied with the statutory requirements of § 12-60-2510(A)(2) and such was not precluded by the Southbridge decision; (2) that the

Assessor was not statutorily required to track the assessment notices to the Taxpayer; and (3) by allowing the Taxpayer to maintain his appeal, the Court was extending the time period for appeal prescribed by statute without authority to do such. (R. pp. 12-20, Resp. Motion for Reconsideration)

On January 10, 2018, the ALC issued its decision on the Respondent's Motion for Reconsideration, ruling (1) that the Assessor had never mailed the assessment notices as required by § 12-60-2510(A)(3); (2) that the Supreme Court's holding in Southbridge was that the Notice of Appeal was not deposited in the United States postal service until after the appeal period had expired, thus, the appeal period ran from the date the appellant received written notice of the trial court's order; and (3) that Tadros' appeal period did not start to run until February 2016. (R. pp. 2-4, ALC Order dated January 10, 2018)

Under the authority of S.C. Code Ann. § 12-60-3380 (2014), the Assessor filed a Notice of Appeal to the Court of Appeals on February 6, 2018. That section provides for the appeal of a tax decision issued by the ALC to the Court of Appeals. The statute further states that such appeals are to be made in accordance with S.C. Code Ann. § 1-23-610(B) (Supp. 2017). Section 1-23-610(B) reads as follows:

> (B) 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) arbritrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

South Carolina courts have also weighed in on the appropriate standard of review for orders coming from the ALC. "As to factual issues, judicial review of administrative agency orders is limited to a determination of whether the order is supported by substantial evidence." Murphy v. South Carolina Dept. of Health and Environmental Control, 396 S.C. 633, 639, 723 S.E.2d 191, 194-195 (2012); MRI at Belfair, LLC v. S.C. Dept. of Health & Envtl. Control, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008).

However, questions of statutory interpretation are questions of law which a reviewing court is free to decide without any deference to the court below. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)

ARGUMENTS

I. The Administrative Law Court erred as a matter of law in interpreting the language of S.C. Code Ann. § 12-60-2510(A)(2) (2014) to prohibit the Assessor from delegating his/her statutory duty to mail assessment notices to a third party vendor, the effect of the Assessor using such being that the assessment notices were never mailed.

The ALC, in its November 10, 2017 order, found that the Assessor's act of giving the assessment notices to a third party for mailing did not amount to service on the addressee, citing Southbridge Properties, Inc. v. Jones. In response to this ruling, the Assessor filed a Motion for Reconsideration in that the Assessor never relied upon the date that the assessment notices were given to the third party mailing service as the date of service on the Taxpayer. Instead, the Assessor had evidence from the U.S. Postal Service of

the actual date the notices were placed in the mail by the third party mailing service. This was the date the Assessor relied upon as service upon the Taxpayer.

In response to the Assessor's Motion for Reconsideration, the ALC issued an order dated January 10, 2018 opining that § 12-60-2510(A)(3) requires that the Assessor mail property tax assessment notices and does not contemplate the use of a third party to mail such documents. Since the Assessor admittedly delegated this duty to a third party, the Court then concluded that the Assessor never mailed the assessment notices in question, and thus, the time did not start to run until the Taxpayer received notice.

At the heart of this dispute is the language of § 12-60-2510(A)(1), (2), and (3) (2014). These subsections read as follows:

> (A)(1) In the case of property tax assessments made by the county assessor, whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more, or whenever the first property tax assessment is made on the property by a county assessor, the assessor, by July first in the year in which the property tax assessment is made, or as soon after as is practical, shall send the taxpayer a property tax assessment notice. In years when real property is appraised and assessed under a countywide equalization program, substantially all property tax assessment notices must be mailed by October first of the implementation year. In these reassessment years, if substantially all of the tax assessment notices are not mailed by October first, the prior year's property tax assessment must be the basis for all property tax assessments for the current tax year. A property tax assessment notice under this subsection must be in writing and must include:
> (a) the fair market value;
> (b) value as limited by Article 25, Chapter 37, Title 12;
> (c) the special use value, if applicable;
> (d) the assessment ratio;
> (e) the property tax assessment;
> (f) the number of acres or lots;
> (g) the location of the property;

(h) the tax map number; and
(i) the appeal procedure.
(2) The notice must be served upon the taxpayer personally or by mailing it to the taxpayer at his last known place of residence which may be determined from the most recent listing in the applicable telephone directory, the Department of Motor Vehicles' motor vehicle registration list, county treasurer's records, or official notice from the property taxpayer.
(3) In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment.

Under (A)(1) above, the pertinent language states "the assessor ... shall send the taxpayer a property tax assessment notice." Under (A)(2), which deals with service of the notice, there is no mention of the Assessor. Under (A)(3), the pertinent language reads "...within ninety days after the assessor mails the property tax assessment notice ... ." Notably, in (A)(2) specifying how the notice is to be served, there is no mention of the Assessor. Nonetheless, the ALC locked its vision on the language of (A)(3) referring to the Assessor's mailing of the assessment notice as the beginning of the 90 day appeal period..

A. Despite the statutory language of § 12-60-2510(A)(1) and (3), the mailing of the Notices of Assessment is a ministerial/clerical duty and, as such, it is not an unauthorized delegation of authority to contract with a third party vendor to perform that duty.

The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial). Redmond v. Lexington County School District No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994); Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008). The character of an official's public duties is determined by the nature of the act performed.

Long v. Seabrook, 260 S.C. 562, 197 S.E.2d 659 (1973); Wilson. The duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. Redmond; Wilson. It is ministerial if it is defined by law with such precision as to leave nothing to the exercise of discretion. Id. In contrast, a quasi-judicial duty requires the exercise of reason in the adaption of means to an end, and discretion in determining how or whether the act shall be done or the course pursued. Id.

Based upon the above, the mailing of an assessment notice is purely a ministerial duty. The third party mailing vendor need only affix postage and drop the notice in the mail. All of the discretionary decisions, such as valuation of the property, have already been made by the Assessor.

The Assessor has found no South Carolina cases stating that ministerial duties cannot be delegated. Further, § 12-60-2510 does not expressly prohibit the delegation of the mailing duties.

In support of this construction, other states have addressed this issue in similar factual scenarios and have found that the outsourcing to a third party vendor of ministerial duties is not in violation of a statute requiring the government official to perform the duty. In the case of State ex rel. City of Aventura v. Jimenez, 41 Fla. L. Weekly D1753, 211 So. 3d 158 (2016), Jimenez challenged his ticket for running a red light claiming that the City's red light camera program was illegal in that a third party vendor printed and mailed notices and citations in violation of a statutory requirement that only an officer can issue such citations. In addition, Jimenez claimed that the vendor sent an electronic copy of the citation to the Clerk of Court in violation of the statutory requirement that only an officer "shall

provide" an electronic copy to the clerk. The Court disagreed finding that these were purely ministerial duties and nothing in the statutory language prohibited such delegation. The Court's analysis of this issue points to the absurdity of interpreting the statute in any other way. It reads:

> Jimenez's argument conflates the non-delegable discretionary power to make the decision to issue the citation with the delegable clerical and ministerial task of delivering the citation. By way of analogy, the Florida Constitution similarly authorizes individual justices of the Florida Supreme Court, judges of the district courts, and judges of the circuit courts to "issue" writs of habeas corpus. Art. V, §§ 3(b), 4 (b), 5(b). Surely an otherwise lawful writ would not be rendered unlawful because the issuing jurist did not personally print, seal, and mail the envelopes used to deliver the writ. Nor does the law require the writ to be delivered by a person under the immediate supervision or employ of the judge. See *Fla. Bar v. Abreu*, 833 So. 2d 752, 753 (Fla. 2002) (noting with approval that the Florida Supreme Court's order to show cause was served by a private process server). Likewise we see nothing in the statutory language mandating that a sworn police officer, with years of specialized law enforcement training, must perform or directly supervise such clerical tasks.

211 So. 3d at 170. See also City of Oldsmar v. Trinh, 41 Fla. L. Weekly D2435, 210 So. 3d 191 (2016).

It should also be noted that there are many examples of ministerial duties being delegated to others in violation of statutes requiring the delegator to perform the duty – some of which involve the ALC. For example, S.C. Code Ann. § 1-23-600(B) (Supp. 2017) states that the "chief [administrative law] judge shall assign an administrative law judge to the case" however, that function is actually done by the Clerk of Court. Section § 1-23-600(C) states that "the presiding administrative law judge shall render the decision in a written order" however, it is frequently the prevailing party that drafts the order for the judge's

signature. These are ministerial duties that are being delegated and they pose no harm to the legal system or prejudice to any party. Instead, they provide economy and efficiency just as the mailing service does for the Assessor's Office.

Finally, Southbridge Properties v. Jones, upon which the ALC relies, acknowledges the use of a third party mailing service in its decision. The Supreme Court states that where service by mail is permitted, service is complete when the document is deposited in the U.S. Mail, properly addressed, with sufficient postage. In the Southbridge case, it was the date that the third party mailing service placed the Notice of Intent to Appeal in the U.S. Mail that was the date of service. Although the Supreme Court found that service was not timely, it expressed no issue with the fact that a third party mailing service had mailed the notice.

B. A literal interpretation of § 12-60-2510 requiring the Assessor to be the party physically mailing the assessment notices produces an absurd result not consistent with legislative intent.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Id. It is only when the literal application of the statute produces an absurd result will a court consider a different meaning. CFRE, 395 S.C. at 75, 716 S.E.2d at 881.

The literal application of § 12-60-2510 produces an absurd result to the extent that such is interpreted to require that the Assessor must physically mail the assessment notices in order to be in compliance with the statute and to effectuate service of the assessment notices. In essence, the ALC has opined that the Assessor must lick the envelope, affix the stamp and place it in the Post Office. This is an absurd and unreasonable conclusion in this

day and age. Almost every county and state agency in South Carolina uses a third party mailing service for mass mailings such as tax assessment notices, tax bills, utility bills, etc. This allows counties and states to achieve financial economies in personnel and in postage costs. For example, mass mailing services can combine mail going to one address, combine mail from various agencies going to one zip, and use IMb codes to reduce the cost of mailing. Further, there are no due process rights being abrogated by this process.

Notably, other states have readily embraced the role of third party mailing services in the tax assessment process. See Davis & Associates, L.L.C. v. Stafford Township, 18 N.J. Tax 621 (2000), whereby the New Jersey statute required the Assessor to notify each taxpayer of his/her current assessment and the Assessor used a third party mailing service to perfect service of such assessments. Thereafter, a taxpayer attempted to appeal, claiming that he did not receive the assessment. The New Jersey Tax Court denied the appeal as untimely, upholding the assessments mailed by the third party mailing service.

The Richland County Assessor's case is even stronger than the case put forth by the New Jersey Assessor in that Richland County has U.S. Postal Service proof that the Taxpayer's notices were mailed.

As noted above, the South Carolina Supreme Court has also declined to raise an issue with regard to perfecting service through a third party mailing service but found the service untimely in that it was after the time for appeal had expired. See Southbridge Properties v. Jones.

II. The Administrative Law Court erred as a matter of law in finding that the Notices of Assessment had not been served pursuant to S.C. Code Ann. § 12-60-2510(A)(2) (2014).

The purpose of § 12-60-2510 is to assure the taxpayer of his/her due process rights with regard to the assessment of property taxes. Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review. U.S.C. Const. Amend. 14. Further, due process requires notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Jones v. Flowers, 547 U.S. 220, 226 (2006).

Section 12-60-2510(A)(2) satisfies the due process notice requirements. It states that the notice must be served upon the taxpayer personally or by mail to the taxpayer's last known place of residence. It then provides methods to determine the taxpayer's last known place of residence.

In this instance, the Notices of Assessment were sent by mail to an address the Taxpayer has admitted is his correct address. (R. p. 71, lines 8-10) The Assessor provided evidence of a U.S. Postal Service scan showing the date the Notices of Assessment were mailed and the location of mailing. (R. p. 43, lines 7-24; R. pp. 187-189, Resp. Exh. 8) Conversely, the Taxpayer provided no evidence to dispute that the assessment notices were mailed. Where service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage. Southbridge Properties, Inc. v. Jones; Lindsey v. South Carolina Tax Commission, 323 S.C. 57, 60, 448 S.E.2d 577, 578 (1994) Evidence of mailing establishes a rebuttable presumption of receipt. Weir v. Citicorp Nat'l Services Inc., 312 S.C. 511, 435 S.E.2d 864 (1993); Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003). A taxpayer's self-serving claim that he did not receive the notice will generally be insufficient to rebut the presumption. Klingenberg v. C.I.R., T.C. Memo 2012-292

(2012). (R. p. 43, lines 20-24; R. pp. 46-47, lines 21-11; R. pp. 187-189, Resp. Exh. 8) As such, the notices were properly served and the Assessor is entitled to the rebuttable presumption of receipt.

III. The Administrative Law Court's finding that the Taxpayer did not receive the Notices of Assessment based upon the Taxpayer's testimony and the U.S. Postal Service's last scan in San Diego is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

Since evidence of mailing establishes a rebuttable presumption of receipt, the ALC effectively opined that the Taxpayer's testimony, coupled with the last postal scan in San Diego, is sufficient evidence to overcome the presumption. Such is erroneous based upon the evidence on the record.

The Taxpayer's testimony was nothing more than a plea that he did not receive the assessment notices. (R. pp. 61-62, lines 14-6; R. p. 69, lines 9-11) It should be noted that the Taxpayer has no tax history in South Carolina, he lives in Del Marr, California, and this is his only property in South Carolina. (R. pp. 113-114, lines 11-8) In addition, he paid $1,850,000 for the property in December 2014 solely on the word of an agent without ever actually seeing the property, reviewing the leases, or talking to the tenants. (R. p. 60, lines 20-21; R. p. 105, lines 10-25; R. p. 106, lines 1-13; R. p. 108, lines 8-11) Despite his many issues with the property and its tenants, he did not see the property until he came for his hearing before the Richland County Board of Assessment Appeals in October 2016. (R. pp. 105-106, lines 22-1) He further testified that he did not know the meaning of the word "appeal." (R. p. 62, lines 14-17) These facts do not evidence a sophisticated purchaser.

In addition, the Taxpayer's testimony and letters with regard to the receipt of his tax bills were both inconsistent and lacked credibility. His letters dated April 18, 2016, May 3, 2016, and June 6, 2016, all reference that he received the tax bills in February 2016. (R. p. 181, Resp. Exh. 4; R. pp. 182-183, Resp. Exh. 5; R. pp. 184-185, Resp. Exh. 6) However, in testimony, he was more tentative about the date that he received the tax bills, stating that he received them in January or February 2016. (R. p. 62, lines 1-4) This is significant in light of the fact that the tax bills were mailed October 28, 2015. (R. pp. 36-37, lines 23-1) It is also significant that the Taxpayer provided copies of the original tax bills to the Assessor, not a subsequent bill. (R. p. 37, lines 6-13; R. pp.178-179, Resp. Exh. 2) Thus, the bills mailed October 28, 2015 are the bills that he claims to have received in January/February 2016. It 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.

Logically viewing the above information, the more likely scenario is that the Taxpayer did receive the assessment notices in question but did not understand the importance of them because the assessment notices only show the fair market value of the property, not the tax dollars associated with that value. When he opened his tax bills in January/February, he received a shock in that the property taxes due were much more than he had anticipated. At that point, he then attempted to get his tax bills lowered, as reflected in his telephone calls and letters to various officials at Richland County.

The Assessor produced evidence that the assessment notices addressed to the Taxpayer were last scanned in San Diego, California, only 20 miles from the Taxpayer's home in Del Marr, California. (R. pp. 187-189, Resp. Exh. 8) The Taxpayer and the

ALC placed great significance on the fact that the Assessor could not prove that the letter was delivered. However, it was explained in testimony that the IMb scan service did not track mail to the recipient, only to the last facility having an automated scan. (R. pp. 43-44, lines 13-16) However, the more important point is that the Assessor met its burden of providing notice reasonably calculated to apprise the Taxpayer of his property tax value by placing such in the U.S. mail, addressed correctly, with proper postage affixed. (See Lindsey v. South Carolina Tax Commission.) The burden of proof is on the Taxpayer to show that he did not receive the assessment notices. He did not meet this burden. A taxpayer's self-serving claim that he did not receive the notice will generally be insufficient to rebut the presumption. Klingenberg v. C.I.R., T.C. Memo 2012-292 (2012).

Although the Assessor's evidence went far above and beyond what is required by statute, the Taxpayer attempted to discredit it based upon the fact that there was a post office much closer to his home in Del Marr where he normally picked up certified mail addressed to him. (R. pp. 63-65, lines 10-9) As such, he claimed that mail arriving in San Diego was not evidence that it was delivered to him. The ALC later referred to this in its Order as "irregularities in transmission." (R. p. 3, Order p. 2) These statements are inaccurate and evidence of a misunderstanding of the U.S. Postal Service's automated scanning service. There is no evidence in the record of irregularities in the Postal Service's delivery of this document. Further, it is of no consequence that the Taxpayer has a post office closer to him than the post office that last scanned the assessment notices. The Taxpayer's closest post office may not have automated scan equipment or the San Diego post office may be the main distribution point for mail in that area. What

is known and was in evidence is that the IMb code reflected the Taxpayer's correct address, including his correct zip and that the notices were last scanned in San Diego on July 19, 2015, two days after being mailed and only 20 miles from the Taxpayer.

The ALC's decision would have been understandable if the Taxpayer had provided evidence of an incorrect address or the assessment notices had been returned to the Assessor. Either of these facts would have been sufficient to rebut the presumption that the Taxpayer received the notices. However, these were not the facts before the ALC.

Interestingly, the ALC buttresses its opinion with Hamm v. South Carolina Public Service Commission, 287 S.C. 180, 336 S.E.2d 470 (1985), where there is clear evidence that the opposing party did not receive notice due to the fact that it was addressed to a party who had not been at that address in several months. However, those are not the facts the ALC was deciding.

Based on a preponderance of the evidence, the ALC should have found that the Taxpayer received the notices.

IV. The Administrative Law Court erred as a matter of law in that its holding extended and/or enlarged the time period for appeal prescribed by statute, and as such, is beyond the authority of the Court.

In ruling that this appeal is timely, based solely on the testimony of the Taxpayer with no supporting documentation and contrary to the evidence presented by the Assessor, the ALC's Order has extended/enlarged the statutorily prescribed time period created in § 12-60-2510(A)(3) and (4). The ALC does not have the power to do such. This issue was addressed in the South Carolina Supreme Court case of Palmer v. Simons, 107 S.C. 93, 92 S.E. 23 (1917) as follows:

> It is settled by numerous decisions of this court that the time prescribed by statute within which notice of appeal must be given cannot be enlarged or extended by the courts. *Davis v. Vaughan,* 7 S.C. 342, *Scott v. Pratt,* 9 S.C. 82, *Manuel v. Loveless,* 56 S.C. 426, 35 S.E. 1; *Gibbes v. Beckett,* 84 S.C. 534, 66 S.E. 1000; *Lightsey v. Rentz,* 85 S.C. 401, 67 S.E. 456; *O'Rouke v. Paint Co.,* 91 S.C. 399, 74 S.E. 930. In Gibbes v. Beckett, the court said:
>
> > "The law requiring appeals to be taken within a fixed time may sometimes produce hardship, but it is important to the administration of justice that there be no uncertainty. There will be few, if any, cases of hardship if the time allowed is utilized without dependence on quick work at the end of the period. However that may be, the court has no power to extend the time fixed by law."

Using the principles by which the ALC granted this taxpayer relief from the 90 day limitation on appeals, a taxpayer need only plead that he/she did not receive the assessment notice or tax bill in the mail in order to receive an extended appeal period. This frustrates the purpose of having statutory time frames for appeals in tax matters (i.e., to allow governmental entities to have closure with regard to their finances) and presents constitutional issues of fairness in that statutory laws governing limitations of time to file an appeal/objection are not being applied consistently.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent, Richland County Assessor, respectfully requests that this Court reverse the Orders of Administrative Law Judge H. W. Funderburk, Jr., filed November 30, 2017 and January 10, 2018, and rule that the Appellant-Respondent properly served the assessment notices on the Respondent-Appellant via its third party mailing service and that the Respondent-

Appellant failed to timely serve an objection. As such, the Administrative Law Court had no jurisdiction to hear the merits of his property tax valuation appeal.

Respectfully submitted,

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8/2, 2018
Columbia, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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

v.

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

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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