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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Appellant Case No. 2018-001502
Case No. 10-ALJ-08-0387-AP

Pee Dee Health Care, P.A.,

Respondent,

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v.

South Carolina Department of Health and
Human Services,

Appellant.

AUG 27 2018

SC Court of Appeals

MOTION TO DISMISS

Pee Dee Health Care, P.A., by and through undersigned counsel, moves for dismissal of the notice of appeal filed by the South Carolina Department of Health and Human Services in the above-captioned matter on August 15, 2018. Pursuant to S.C. Code Ann. § 1-23-610(A)(1), judicial review is available to an aggrieved party only upon the final decision of an administrative law judge. An order by the administrative law court (ALC) remanding unresolved issues to an agency is not appealable until the order is final and the judgement disposes of the entire subject matter of the action. *See Spalt v. S.C. Dep't of Motor Vehicles*, 816 S.E.2d 579, 582 (S.C. 2018). In *Spalt*, the Court clarified that an order is not final and, therefore, not appealable when the order leaves "some further act which must be done," stating:

If there was any doubt remaining after *Charlotte-Mecklenburg*, we now clarify that when a party seeks review of an order of the ALC - pursuant to section 1-23-380 or section 1-23-610 -- the court of appeals will not entertain an appeal from an order that leaves "some further act which must be done."

Id. at 582.

The Court in *Spalt* emphasized the words, "final judgment," stating:

[A]s we held in *Charlotte-Mecklenburg*, an order of the ALC remanding to the agency is not an immediately appealable order. Because the order of the ALC in this case remanded the case to the OMVH for further proceedings, the court of appeals was correct to dismiss the Department's appeal.

*Id.*¹

In the case at bar, the Order of the ALC (page 20) specifically remanded matters to the SCDHHS' hearing officer for further determination, stating:

IT IS HEREBY ORDERED that the order of the Department is AFFIRMED in part and reversed in part. This matter is REMANDED to the Department for a ruling by the Division of Appeals and Hearings....

The remanded issue plainly requires that "some further act" must be done by the Department's Division of Appeals and Hearings. Thus, the Order is not an appealable final judgement, and an appeal on this matter is improper at this time. Accordingly, Respondent Pee Dee Health Care, P.A. requests the appeal of Petitioner SC Department of Health and Human Services be dismissed.

¹See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 692 S.E.2d 894, 894 (S.C. 2010) (applying subsection 1-23-610(A)(1) of the South Carolina Code (Supp. 2017) to an appeal from a contested case tried at the ALC); see also S.C. Code Ann. § 1-23-380 (Supp. 2017) ("A party . . . who is aggrieved by a final decision in a contested case is entitled to judicial review. . . .").

Respectfully submitted,

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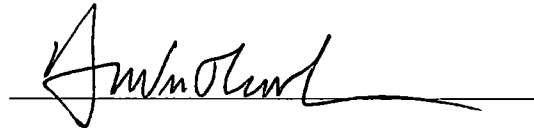
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CERTIFICATE OF SERVICE

The undersigned certified that the above motion(s) was served on the undersigned by
deposition the same in the United State Mail, first class postage:

Kenneth P. Woodington
Davidson & Lindemann, P.A.
P.O. Box 8568
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August 27, 2018.



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August 27, 2018

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
1220 Senate Street
Columbia, SC 29201

RE: Pee Dee Health Care, P.A. v. South Carolina Department of Health & Human
Services
Lower Court Docket No. 10-ALJ-08-0387-AP
Appellate Case No. 2018-001202

Dear Ms. Kitchings:

Enclosed are the original and seven copies of Pee Dee Health Care, P.A.'s Motion to Dismiss. Please file the original and return a clocked-in copy to us via our courier.

By copy of this letter, I am serving all parties.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dan Westbrook', with a long horizontal flourish extending to the right.

Daniel J. Westbrook

DJW:kh
Enclosures
cc: Kenneth P. Woodington, Esq.
James M. Griffin, Esq.
Margaret N. Fox, Esq.

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