

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

SC Court of Appeals

Deborah Brooks Durden, Administrative Law Judge

NO. 17-ALJ-17-0466-CC

The Venture Grouping, LLC, d/b/a Zen Ultra Lounge, Appellant,

v.

South Carolina Department of Revenue, Respondent.

FINAL REPLY BRIEF OF APPELLANT

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APPELLANT'S REPLY ARGUMENT

1. Appellant replying to Respondent's argument that the Administrative Court properly dismissed the case at bar due to Appellant's failure to timely file its request for a contested case hearing, thus divesting the Administrative Law Court of jurisdiction to hear the case.

The Respondent's argument relies on S. C. Code §12-60-1320 which states as follow:

"Upon exhaustion of his pre-hearing remedy, a person may seek relief from the Department's Determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty (30) days after the date the Department's Determination was sent by first class mail or delivered to the person. Request for a hearing before the Administrative Law Court must be in accordance with its rules."

The Respondent's argument is that pursuant to Rule 3(c) SCALCR, that states that service of a notice or other paper must be required and that S.C. Code §12-60-1320 does not specifically mention service. The Appellant is of the opinion of S. C. Code §12-60-1320 does envision service being made upon the person by stating the time runs from the date of the Department's Determination sent by first class mail or delivered to the person which envisions the person being served with the notice of the Department's decision. With the notice being sent first class mail, that would trigger Rule 3(c), SCALCR to have five (5) additional days from the prescribed period if sent by first class mail.

CONCLUSION

The Appellant filed its notice for request for a contested case hearing within the allotted thirty (30) day notice period pursuant to Rule 3(c) of the S.C. Administrative Court Rules and the Administrative Law Court's decision should be overturned and the Appellant's contested case should be allowed to continue.

Respectfully submitted,

By: 

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