

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Aug 26 2021

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No. 20-ALJ-17-0126-CC

APPELLATE CASE NO 2021-000808

Ennis M. Fant..... Appellant,

v.

Anderson County Assessor..... Respondent.

MOTION TO DISMISS APPEAL

Respondent, Anderson County Assessor (“Respondent”) moves to dismiss the captioned appeal, for which Appellant filed the Notice of Appeal on or about July 28, 2021, appealing from the order of the Honorable S. Phillip Lenski, filed June 28, 2021. In support of this Motion, Respondent shows as follows:

PROCEDURAL BACKGROUND

1. On May 22, 2020, Appellant filed a request for a contested hearing with the South Carolina Administrative Law Court (“ALC”).
2. On January 27, 2021, the Honorable S. Phillip Lenski conducted a hearing on the matter.
3. On May 27, 2021, the ALC issued a Final Order finding that Appellant failed to carry his burden of establishing that he was entitled to the special 4% assessment ratio after November 13, 2008.

4. On June 4, Appellant filed a motion to reconsider (“MTR”).
5. On June 28, the ALC entered an “Order Denying Motion to Reconsider” (“Denial Order”). *See* Exhibit A (Order Denying Motion to Reconsider).
6. On July 28, 2021, Appellant filed the Notice of Appeal in this case.
7. July 28, 2021 was the last day upon which Appellant could file its Notice of Appeal pursuant to Rule 203(b)(6) of the South Carolina Rules of Civil Procedure.

ARGUMENT

This Court must dismiss Appellant’s appeal because of Appellant’s failure to fulfill a condition precedent to appealing from the ALC’s Denial Order. South Carolina Code Annotated section 12-60-3370 requires that “a taxpayer *shall* pay or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge *before* appealing the decision to the court of appeals” (emphasis added). “Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a *mandatory requirement*. *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (emphasis added).

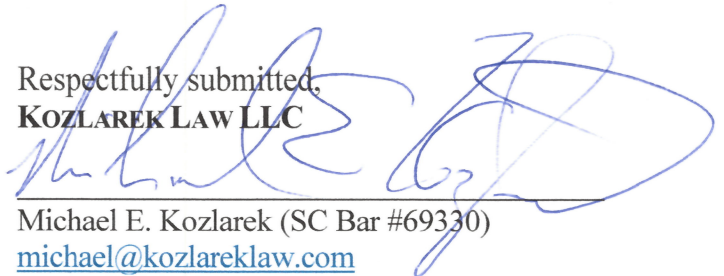
As of the date of this Motion, Appellant has neither paid the taxes ordered by the ALC nor, to the best of Respondent’s knowledge, posted a bond for the taxes’ payment. Accordingly, no appeal could have been sought by Appellant and Appellant’s Notice of Appeal is a nullity. This Appeal’s dismissal is, therefore, mandatory.

CONCLUSION

WHEREFORE, for the reasons stated, this Court should dismiss Appellant’s appeal with prejudice.

[SIGNATURE PAGE AND PROOF OF SERVICE FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

Respectfully submitted,
KOZLAREK LAW LLC



Michael E. Kozlarek (SC Bar #69330)

michael@kozlareklaw.com

Kimila L. Wooten, (SC Bar #64516)

kim@kozlareklaw.com

201 Riverplace, Suite 500 (29601)

Post Office Box 565

Greenville, South Carolina 29602-0565

O: 864.527.5491

M: 803.312.3199

F: 864.670.5246

Anderson County Attorney:

Leon C. Harmon (SC Bar #2705)

lharmon@andersoncountysc.org

101 South Main Street (29624)

Post Office Box 8002

Anderson, South Carolina 29622

O: 864.222.2123

Attorneys for Respondent

August 26, 2021
Greenville, South Carolina