

Circuit Court for Baltimore City
Case No. 24-C-20-000114

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 589

September Term, 2020

RICHARD CHAVATEL

v.

CONSUMER PROTECTION DIVISION

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 1, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Philip and Kristal Insley (the consumers) entered into an agreement with Richard Chavatel d.b.a. Chavatel Builders, appellant, to build their new home. Following a series of disputes with Mr. Chavatel, the consumers brought a claim against the Maryland Home Builder Guaranty Fund, which is administered by the Consumer Protection Division of the Office of the Attorney General of Maryland (the Division), appellant. The claim was referred for a contested case hearing and an Administrative Law Judge (ALJ) entered a proposed order granting compensation to the consumers in the amount of \$50,000. Mr. Chavatel filed exceptions to that order and, following a hearing, the Chief of the Division entered a final order adopting the ALJ’s opinion, with minor modifications. Mr. Chavatel then filed a petition for judicial review in the Circuit Court for Baltimore City. However, the court ultimately dismissed that petition as having been untimely filed. This appeal followed. In its brief, the Division has filed a motion to dismiss the appeal as untimely. For the reasons that follow, we shall grant the motion to dismiss.

Maryland Rule 8-202 provides that a party must file his or her notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” This requirement, while not jurisdictional, is a “binding rule on appellants.” *Rosales v. State*, 463 Md. 552, 568 (2019). Mr. Chavatel filed a Notice of Appeal on August 14, 2020, within 30 days after the circuit court entered its order dismissing his petition for judicial review. However, that Notice of Appeal was not “accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service,” as

required by Maryland Rule 1-323.¹ This Court has held that “a pleading or paper required to be served by Rule 1-321 that does not contain an admission or waiver of service or a signed certificate of service showing the date and manner of making service cannot become a part of any court proceeding[.]” *Lovero v. Da Silva*, 200 Md. App. 433, 446 (2011). Therefore, Mr. Chavatel’s notice of appeal should not have been accepted for filing. *Id.* at 447. Because the receipt of the Notice of Appeal by the clerk on did not constitute a “filing of the notice on that date under Rule 8-202(a),” and no other effective Notice of Appeal has been filed, the appeal in this case is untimely. *Id.* 450. Consequently, we shall dismiss the appeal.

**MOTION TO DISMISS APPEAL
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

¹ At the bottom of the Notice of Appeal, there appears the following: “CC; Consumer Protection Division.” Such language does not constitute a certificate of service as it does not show the date and manner of making service. Moreover, it makes no mention of the consumers, who were also a party to the judicial review proceeding in the circuit court.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0589s20cn.pdf>