Circuit Court for Prince George's County
Case No: CAL17-38334

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1036

September Term, 2018

JAMES T. WALKER

v.

CENTRE INSURANCE COMPANY

Wright,
Wells,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: November 14, 2019

James T. Walker, appellant, petitioned the Circuit Court for Prince George's County for judicial review of a decision entered by the Office of Administrative Hearings ("OAH") disposing of his case by summary disposition for lack of subject matter jurisdiction. Centre Insurance Company ("Centre"), appellee, moved to dismiss Mr. Walker's petition, contending that the court lacked jurisdiction and that the action was barred by the statute of limitations, accord and satisfaction, and res judicata. The circuit court then entered an order dismissing Mr. Walker's petition for judicial review with prejudice. Mr. Walker noted an appeal to this Court, raising the following question for our review:

> Did the lower court err and abuse its discretion when it dismissed appellant's petition for judicial review with prejudice and statistically closed the case?

For the reasons to be discussed, we vacate the dismissal order and remand to the circuit court for further proceedings.

BACKGROUND

On April 28, 2002, a tornado destroyed the home and associated personal property of Mr. Walker as it tore a path through La Plata, Maryland. This appeal is preceded by sixteen years of protracted litigation between Mr. Walker and Centre stemming from this unfortunate incident. We do not endeavor to lay out an exhaustive history of the legal claims and proceedings which have transpired between the parties, some of which are not pertinent to the issues in this appeal. The following overview, however, is instructive.

I. Dwelling Coverage and Endorsement

Conflict arose between the parties regarding a homeowner's insurance policy ("the Policy") underwritten by Centre. Effective at the time of the tornado, the Policy provided

coverage for loss and damage to the Walker home and corresponding property, with liability capped at $290,000 for damage to the dwelling itself.[1] Additionally, the dwelling coverage was subject to an endorsement that obligated Centre to pay, subject to certain conditions, up to an additional $145,000.

While Centre ultimately paid the $290,000 dwelling coverage to Mr. Walker, payment of the $145,000 endorsement proceeds remained in question and was at issue in a 2002 complaint that Mr. Walker filed with the Maryland Insurance Administration (the "Administration").[2] After the Administration denied Mr. Walker's claim, an appeal to the OAH commenced, resulting in a June 2003 settlement agreement which stated, in pertinent part, the following:

> [Centre] will pay to "Chase" Manhattan Mortgage Corporation, as escrow agent for the [Walkers], pursuant to the [Walkers'] mortgage, the remaining sum of $145,000 for coverage of the Dwelling ($290,000 having previously been paid.). . . .These payments are intended to resolve all claims as to Dwelling, Separate Structures and Personal Property. . . .The [Walkers] waive and release [Centre] and all agents and assigns from all but the specifically excluded sums referred to on page 4 of the Settlement Agreement and withdraw their appeal in the Office of Administrative Hearings, OAH Case No. ADMINISTRATION-INS-33-200300078. [Centre] will make all of the agreed upon payments to the [Walkers] and Chase within thirty days of the date of this Agreement, except the hold back amounts on the personal property loss, which payments is due on receipt of evidence of replacement.

[1] The Policy also provided coverage for damage and loss to separate structures up to $29,000.00, for damage and loss to personal property up to $203,000, and for loss of use up to $116,000.00. The Policy was subject to additional coverages and endorsements.

[2] Mr. Walker's wife was a party to the proceedings before the Administration and OAH, but she is not a party to this appeal.

In accordance with the settlement agreement, $145,000 was placed into a restricted escrow account with Chase Manhattan Mortgage Corporation ("Chase Manhattan"). Along with the proceeds, Centre sent Chase Manhattan correspondence which read in part:

> Pursuant to the terms of the Settlement Agreement…the proceeds of this check are to be disbursed upon the presentation of bills in excess of $290,000 for the construction of a new residence at 136 Quail Lane, La Plata, Maryland 20646. Upon the presentation of documentation evidencing that the construction bills incurred by the Walkers for the reconstruction of the La Plata, Maryland residence are received, Chase Manhattan Mortgage Corporation is permitted to disburse the $145,000 either incrementally or all at once, up to the amount of construction invoices submitted until the funds are exhausted.

II. Post-Settlement Agreement Litigation

In October of 2003, Mr. Walker filed a second complaint with the Administration, contending, in part, that Centre had not complied with the terms of the settlement agreement. The merits of this complaint were ultimately heard before Administrative Law Judge Marc Nachman in July of 2004. On September 27, 2004, ALJ Nachman issued a decision (the "Nachman Decision") rendering factual findings and conclusions of law not overturned by subsequent appeal and, therefore, applicable to our decision herein.[3]

In pertinent part, the Nachman Decision reiterated that the settlement agreement "embodied the full and final agreements of the parties and was intended to resolve all past claims between the parties which are not specifically excluded in connection with the loss."

[3] Following ALJ Nachman's decision, Mr. Walker filed a petition for judicial review in the Circuit Court for Charles County, but the court dismissed Mr. Walker's petition as untimely filed. Mr. Walker then made a timely appeal to this Court, which reversed the circuit court's judgment. *J.T.W. v. Centre Ins. Co.,* 168 Md.App. 492 (2006). The Court of Appeals reversed the decision of this Court, resulting in an affirmance of the circuit court's dismissal. *Ctr. Ins. Co. v. J.T.W.*, 397 Md. 71 (2007).

ALJ Nachman decided that Mr. Walker's right to bring a claim before the Administration based on the parties' actions and obligations under the insurance policy had been extinguished by the settlement agreement. Additionally, by agreeing that Chase Manhattan was to hold the endorsement proceeds in a restricted escrow account, ALJ Nachman held that the parties tacitly acknowledged that Mr. Walker was not immediately entitled to the receipt of the endorsement funds, "as, under the terms of the Policy, the replacement costs had to be incurred first." ALJ Nachman held, therefore, that Centre had not violated the settlement agreement with regards to the endorsement.

The Nachman Decision also made several factual findings concerning the time deadlines applicable to the dwelling coverage under the Policy. ALJ Nachman found that, pursuant to the Policy, the dwelling coverage was limited in duration to the shortest time required to repair or replace the dwelling and that "the shortest time required to repair and replace the dwelling was eight months." ALJ Nachman reasoned that the eight months commenced in September of 2002 when Centre made a clear commitment in writing to pay up to $435,000.00 to Mr. Walker.[4] This eight-month period would have concluded in May of 2003. Of note, this period expired before the parties entered into the June 2003 settlement agreement, and the settlement agreement did not explicitly set out a new date by which the dwelling should be repaired or replaced once the funds were placed into escrow.

[4] This finding was made in reference to the time limitations applicable to additional living expenses.

To date, five subsequent appeals have come before this Court on an array of issues claimed by Mr. Walker.[5] Notably, in 2007, we held that Centre satisfied the settlement agreement when it sent the $145,000 endorsement proceeds directly to Chase Manhattan, and that any claims arguing otherwise were barred by accord and satisfaction. *Walker v. Centre Ins. Co., et al.*, No. 352 Sept. Term 2006 (filed: October 3, 2007).

III. Withdrawal of the Endorsement Proceeds

In January 2013, over 9 years after the execution of the settlement agreement, Centre sent correspondence to Chase Manhattan[6] asserting that Mr. Walker "never constructed a new residence." Centre requested "a return of the recoverable holdback" in the amount of $145,000 and, in response, Chase Manhattan complied. Upon discovering that the proceeds had been removed from the restricted escrow account in April 2013, Mr. Walker sent a letter to Centre contending that the settlement agreement did not entitle Centre to "restitution or reimbursement of any of those funds." Centre responded in writing, stating that Mr. Walker had no claims arising out of the policy based on the doctrines of accord and satisfaction and res judicata.

IV. Procedural Posture

Four years later, on May 9, 2017, Mr. Walker filed a complaint with the Administration pursuant to § 27-1001 of the Insurance Article and § 3-1701 of the Courts

[5] *Walker v. Centre, et al*., No. 1056, Sept. Term 2007 (filed: July 8, 2008); *Walker v. Centre Ins. Co.*, No. 750 Sept. Term 2008 (filed: March 11, 2010); *Walker v. Centre Ins. Co.*, No. 1269 Sept. Term 2008 (filed: December 9, 2009); and *Walker v. ZC Sterling, et al*., No. 838, Sept. Term 2012 (filed: February 6, 2014).

[6] Mr. Walker was not sent a copy of the letter from Centre to Chase Manhattan. **[R. 365].**

and Judicial Proceedings Article. Mr. Walker alleged that Centre breached the insurance policy and the 2003 settlement agreement when it reclaimed the $145,000 endorsement proceeds from the Walkers' escrow account, acted in bad faith when it "fraudulently claimed to Chase Manhattan that the $145,000 was a recoverable holdback," and engaged in unfair claim settlement practices. The Administration disagreed, finding that Centre did not commit any such violation when it withdrew the endorsement proceeds.

Mr. Walker then requested a de novo hearing before the OAH. Centre filed a motion to dismiss, arguing, in pertinent part, that the OAH was without subject matter jurisdiction, that the homeowner's policy was not extant, that the statute of limitations had expired, and that the complaint was barred by accord and satisfaction, res judicata, the settlement agreement, collateral estoppel, and laches.[7] A hearing on Centre's motion for summary decision proceeded before an ALJ. On November 2, 2017, the ALJ determined that Mr. Walker's claims that Centre had violated the policy and acted in bad faith were resolved by the 2003 settlement agreement. Further, the ALJ decided that the withdrawal of the $145,000 endorsement proceeds did not constitute a new claim and, instead, raised issues concerning the interpretation and alleged breach of the settlement agreement. The ALJ determined that the OAH did not have subject matter jurisdiction over Mr. Walker's complaint stating, "the interpretation and enforcement of a settlement agreement involves principles of contract law and is outside the scope of my authority." The ALJ ordered that

[7] The motion was denied because Centre did not file an affidavit in support of the motion as required by COMAR 28.02.01.12D. A hearing commenced on October 3, 2017, in which the Centre's motion for summary decision was renewed. At the hearing, Centre did not raise jurisdiction as a basis for its motion.

Mr. Walker's complaint be dismissed, providing that "[a] party aggrieved by this final decision may file a petition for judicial review…".

Mr. Walker then sought judicial review in the Circuit Court for Prince George's County. Centre filed a motion to dismiss, alleging that the court did not have subject matter jurisdiction, that venue was improper, and that the action was barred by the statute of limitations, accord and satisfaction, and res judicata. Mr. Walker filed a response thereto. On May 1, 2018, the court granted Centre's motion to dismiss, without a hearing, in an order which did not provide a basis its decision. On May 7, 2018, Mr. Walker filed a "Motion to Obtain Legal Bases for the Court's Dismissal." On May 25, 2018, Mr. Walker filed a motion for reconsideration. On July 6, 2018, after receiving no response, Mr. Walker withdrew his motions. On July 12, 2018, the circuit court formally ordered that the motions be withdrawn and that the case be closed statistically. The next day, Mr. Walker filed a notice of appeal with the court.

MOTION TO DISMISS APPEAL

Pursuant to Maryland Rule 8–603(c), Centre moves to dismiss Mr. Walker's appeal, contending that Mr. Walker failed to file a timely notice of appeal, rendering the appeal time-barred. We disagree.

"The right to appeal, except as authorized by constitution, is regulated entirely by statutes." *Washington Suburban Sanitary Comm'n v. Lafarge N. Am., Inc.*, 443 Md. 265, 274–75 (2015). Ordinarily, pursuant to Maryland Rules 8-201(a) and 8-202(a), "the only method of securing review by the Court of Special Appeals" is to file a notice of appeal

"within 30 days after entry of the judgment or order from which the appeal is taken." If this requirement is not met, the Court does not acquire jurisdiction, and the appeal must be dismissed. *Scarborough v. Altstatt*, 228 Md. App. 560, 565 (2016). In the matter before us, the circuit court dismissed Mr. Walker's petition for judicial review with prejudice on May 1, 2018. Mr. Walker's notice of appeal was not filed until July 13, 2018. Centre contends, based on these facts, that Mr. Walker exceeded the 30-day deadline.

There are, however, statutory exceptions which stay the period for noting an appeal. Specifically, Maryland Rule 8-202(c) permits the notice of appeal to be filed within 30 days after the entry an order disposing of a timely post-judgement motion filed pursuant to Maryland Rules 2-532 (motion for judgment notwithstanding verdict), 2-533 (motion for new trial), or 2-534 (motion to alter or amend judgment), or within 30 days of a notice withdrawing such a motion. To be timely, each of these post-judgement motions must be filed within ten days of the judgment. *See* Maryland Rules 2-532, 2-533, 2-534.

In the matter currently before us, the only action taken within ten days of the court's judgment was the filing of Mr. Walker's titled "Motion to Obtain Legal Bases for this Court's Dismissal of the Petitioners Petition for Judicial Review." The motion, which did not cite to any legal authority, requested that the court "put on record the legal bases [sic] which were used for determining" that the court "did not have subject matter jurisdiction," that the court was "not the proper venue," that the "statute of limitations barred this case from being decided or litigated," and that the case was "barred by the doctrine of res judicata." Mr. Walker also noted that he was considering "whether he should file a motion for reconsideration."

As the Court of Appeals has stated, "any party can clarify the scope of a mandate or order by filing a motion to alter or amend." *Carpenter Realty Corp. v. Imbesi*, 369 Md. 549, 563 (2002). We hold, therefore, that Mr. Walker filed a proper and timely motion to alter and amend pursuant to Maryland Rule 2-534, as it was a request to the court to "set forth additional reasons" or to "enter new reasons."

Accordingly, Mr. Walker effectively stayed the time for noting an appeal. Because his motion to alter and amend was withdrawn on July 6, 2018, Mr. Walker was afforded 30 days therefrom to note his appeal. *See* Maryland Rule 8-202(c). He met this deadline by filing his notice of appeal on July 13, 2018.

DISCUSSION

We review the dismissal of a petition for judicial review for legal correctness. *See Modell v. Waterman Family Ltd. P'ship*, 232 Md. App. 13, 19 (2017). In doing so, we accept "all well-pled facts in the [petition], and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Id*. Dismissal is proper "if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the [petitioner]." *Arfaa v. Martino*, 404 Md. 364, 380–81 (2008).

Centre moved to dismiss Mr. Walker's petition for judicial review, contending that the court lacked jurisdiction and that the action was barred by the statute of limitations, accord and satisfaction, and res judicata. Mr. Walker contends on appeal that the circuit court erred in granting Centre's motion. We agree. Pursuant to Maryland Rule 7-204, the motion to dismiss was required to address "standing, venue, timeliness of filing, or any other matter that would defeat a petitioner's right to judicial review." Because Centre

failed to raise with the court any issue which would defeat Mr. Walker's right to judicial review, the court erred as contended.

A. Circuit Court's Jurisdiction to Exercise Judicial Review

Mr. Walker first argues that the circuit court had authority to review his petition for judicial review pursuant to Maryland Code Annotated. (2007, Repl. Vol. 2016), Insurance Article ("Inc.") § 27-1001 of the Insurance Article, the statute under which he filed his May 9, 2017 complaint with the Administration. We agree.

Generally, in order to exercise judicial review, there must be a legislative grant giving the circuit court authority to review an administrative agency's order or action. *See* Md. Rule 7–201(a) ("The rules in this Chapter govern actions for judicial review of an order or action of an administrative agency, where judicial review is authorized by statute"). Accordingly, "there is typically no right to judicial review of an administrative decision unless that right is established by statute." *Oltman v. Maryland State Bd. of Physicians*, 182 Md. App. 65, 73 (2008). Therefore, we must determine whether § 27-1001 of the Insurance Article permits judicial review of the ALJ's decision that the OAH lacked subject matter jurisdiction over the issues raised in Mr. Walker's May 9, 2017 complaint.

As delineated by § 3-1701 of the Courts Article, § 27-1001 of the Insurance Article applies to "first-party claims under property and casualty insurance policies…issued, sold, or delivered in [Maryland]." In § 27-1001(g) of the Insurance Article, we find that where a party "receives an adverse decision, the party may appeal a final decision by the Administration or an administrative law judge…to a circuit court in accordance with § 2-

215 of [the Insurance Article] and Title 10, Subtitle 2 of the State Government Article." Moreover, § 2-215 of the Insurance Article permits an appeal from "an order resulting from a hearing" and § 10-222 of the State Government Article permits "a party who is aggrieved by the final decision in a contested case" to seek judicial review.

We conclude that Mr. Walker cleared these statutory hurdles, and therefore, the court properly exercised judicial review. *First*, the proceedings came before the OAH for a determination which would impact Mr. Walker's right, if any, to reimbursement from the endorsement proceeds into the future, calling for an administrative hearing. The administrative proceedings, therefore, qualified as a "contested case." *See* § 10-202(d) of the State Government Article (defining a contested case as a "proceeding before an agency to determine…a right, duty, statutory entitlement, or privilege that is required by statute of constitution to be determined only after an opportunity for an agency hearing"). *Second*, there was a summary disposition hearing in which the parties were permitted to testify and introduce evidence for the ALJ's consideration and, therefore, complying with the requirements set forth in § 2-215 of the Insurance Article. *Finally*, the ALJ's decision was adverse to Mr. Walker disposing of his administrative action in its entirety, the decision complying with the requirements set forth in § 27-1001 of the Insurance Article and §10-222 of the State Government Article.

Moreover, "[w]hen a petition for judicial review is filed with the appropriate court, the court has jurisdiction over the case." Ins. § 2-215(f). Pursuant to § 2-215 of the Insurance Article, a petitioner may file for judicial review "to the circuit court of the county where the individual resides." Mr. Walker was a resident of Prince George's County, and

therefore, venue was proper in that jurisdiction. Accordingly, once he filed his petition with the Circuit Court for Prince George's County, the court obtained jurisdiction over the case.

B. Subject Matter Jurisdiction

Centre contends that the Administration and the OAH did not have subject matter jurisdiction over the issues raised in Mr. Walker's complaint and, therefore, "the subsequent Maryland Courts in this matter have no jurisdiction over the subject matter of [Mr. Walker's] Complaint." Though thought-provoking, we decline to entertain this argument on appeal as it was not argued with particularity in Centre's motion to dismiss, nor in its brief on appeal. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain "[a]rgument in support of the party's position."); *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal").

Without addressing the merits, we hold that it would have been procedural error for the circuit court to dismiss Mr. Walker's petition for lack of subject-matter jurisdiction. Maryland Rule 2-311 requires a moving party to state "with particularity the grounds and the authorities in support of each ground" in a written motion filed with the court. The predicate of Centre's argument on appeal is that the Administration and the OAH were without subject matter jurisdiction over the issues raised in Mr. Walker's May 9, 2017 complaint. Though mentioning subject matter jurisdiction in general terms, Centre's supporting memorandum does not address the subject matter raised in Mr. Walker's complaint, i.e., the withdrawal of the endorsement proceeds. While Centre's motion

detailed and outlined past appellate decisions stemming from the destruction of Mr. Walker's home, it did not mention the withdrawal of the $145,000, an event which occurred after all prior litigation between the parties had been concluded. Nor did the motion discuss the scope of the Administration's jurisdiction or whether the alleged violations stemming from the withdrawal of the endorsement proceeds were within the Administration's jurisdiction. It is difficult to conceive how one might argue that an agency or a court is without subject matter jurisdiction without addressing the subject at issue and the scope of the court or agency's jurisdiction. Therefore, Centre's argument that the court lacked subject matter jurisdiction was not argued with particularity pursuant to Maryland Rule 2-311.

Moreover, on appeal, Centre advances only conclusory statements that the administration was without subject matter jurisdiction over the settlement agreement and the alleged breach of the settlement agreement pursuant to § 27-1001. Though we are directed to the ALJ's findings in the appendix, there is no argument that the ALJ's decisions about jurisdiction were correct. Centre also does not cite to any authority that the circuit court cannot exercise judicial review to determine the scope of the Administration's jurisdiction. On the contrary, the scope of an administrative agency's subject matter jurisdiction has previously been subject to judicial review and appellate review. *See John A. v. Bd. of Educ. for Howard Cty.*, 400 Md. 363, 388–89 (2007) (affirming the Board's decision that it lacked subject matter jurisdiction to hear issue).

C. Standing and Timeliness of Filing

Because the court did not explicitly state the grounds upon which it based its dismissal of Mr. Walker's petition for judicial review, we will briefly address whether the court was permitted to dismiss Mr. Walker's petition due to deficiencies with standing and timeliness of filing pursuant to Maryland Rule 7-204. As to standing, Centre did not proffer an argument in its motion that Mr. Walker lacked standing to appeal for judicial review. Moreover, Mr. Walker, as "a party to the hearing" at the administrative level, had standing to petition for judicial review pursuant to Maryland Rule 7-204.

As to timeliness of filing, § 2-215 of the Insurance Article provides that a petition for judicial review be filed within 30 days after "the order resulting from the hearing was served on the persons entitled to receive it." The ALJ's decision was issued on November 2, 2017, and Mr. Walker's Petition for Judicial review was filed within 30 days of the decision, on November 19, 2017. Therefore, Mr. Walker's petition for judicial review was timely. As a matter of law, the court did not have grounds to dismiss Mr. Walker's petition for lack of standing or timeliness of filing.

D. Res Judicata

Maryland Rule 7-204 also permits a respondent to file a preliminary motion to dismiss addressed to "any other matter that would defeat a petitioner's right to judicial review." Centre's motion to dismiss argued that the action was barred by the doctrine of res judicata. We will, therefore, consider whether this argument could have defeated Mr. Walker's right to judicial review as a matter of law.

The doctrine of res judicata "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action

are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Anand v. O'Sullivan*, 233 Md. App. 677, 696 (2017) (quoting *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 106–07 (2005). "Under Maryland law, the elements of res judicata, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits." *Id*. The Court of Appeals has explained that, "if the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously." *Id*. at 699. Moreover, "[a]ll matters which were litigated or could have been litigated in the earlier case are conclusive in the subsequent proceeding." *Id.*

As to the first prong of res judicata, there is no dispute that the long string of litigation stemming from the destruction of the Walker home, has involved the parties to the present litigation, Mr. Walker and Centre. However, as to the second and third prongs, the record does not reflect that the issue presented for judicial review was identical to an issue raised in prior adjudication.

Here, the ALJ's decision narrowly held that the OAH did not have subject matter jurisdiction over Mr. Walker's May 9, 2017 complaint.[8] This was the decision from which

[8] While there was a hearing on Centre's motion for summary disposition, there was not a hearing on the underlying merits of Mr. Walkers complaint alleging violations by Centre when it reclaimed $145,000 in endorsement proceeds from the restricted escrow account.

Mr. Walker noted his appeal. The circuit court, tasked with de novo review as prescribed by § 27-1001 of the Insurance Article, was to determine whether the ALJ's conclusion was legally correct. *Schisler v. State*, 394 Md. 519, 535 (2006). Had the circuit court exercised judicial review, they would have been confined to determining whether the OAH had subject matter jurisdiction over the May 9, 2017 complaint.

Whether the OAH had subject matter jurisdiction over the May 9, 2017 complaint had not previously been adjudicated, nor could it have been. The factual genesis of Mr. Walker's May 9, 2017 complaint was the withdrawal of $145,000 in endorsement proceeds from the Chase restricted escrow account. All prior litigation and appeals between the parties had been resolved before the withdrawal occurred, and therefore, Mr. Walker could not have addressed whether the withdrawal was a violation of any duty in prior litigation. As the issue had not been raised, the court had not addressed whether the ALJ had subject matter jurisdiction to address the alleged violations in Mr. Walker's complaint.

Centre's invocation of res judicata did not address whether the circuit court could exercise judicial review over the latest issue Mr. Walker raised in his complaint, as required by Maryland Rule 7-204. Instead, Centre's reliance on res judicata seems to focus on whether Mr. Walker's initial complaint with the Administration was barred by res judicata. This issue is not presently before the Court for review. However, it is worth noting that despite Centre having raised the issue of res judicata in argument, the ALJ did not address whether res judicata barred Mr. Walker's underlying complaint. Moreover, the ALJ expressed some skepticism, as do we, if the courts have addressed whether Centre could have unilaterally withdrawn the endorsement proceeds. During the summary decision

hearing, the ALJ repeatedly asked where any prior ALJ or court had decided the issue. After hearing argument, the ALJ remarked that Centre was not answering her question.

Centre seems to rely on ALJ Nachman's 2004 decision that the eight months commenced in September of 2002 when Centre made a clear commitment in writing to pay Mr. Walker $435,000.00. However, this eight-month period would have concluded in May of 2003, before the parties entered into the settlement agreement. Further, the settlement agreement did not explicitly set out a new date by which the dwelling should be repaired or replaced once the funds were placed into escrow, nor did it set out when, if ever, the funds would be withdrawn.

Nevertheless, because Centre's argument as to res judicata was not tailored to Mr. Walker's right to judicial review of the ALJ's decision and were instead, tailored to issues concerning Mr. Walker's underlying complaint with the Administration, they did not form a proper basis for dismissal pursuant to Maryland Rule 7-204. Therefore, the court was not permitted to grant Centre's motion to dismiss based res judicata.

E. Accord and Satisfaction

Centre's motion to dismiss also argued that the action was barred by the doctrine of accord and satisfaction. However, we conclude that this argument could not have defeated Mr. Walker's right to judicial review pursuant to Maryland Rule 7-204 either.

We have previously explained that the doctrine of accord and satisfaction arises "when a claim is disputed, acceptance of payment, coupled with knowledge that payment is intended fully to satisfy a disputed claim, constitutes an accord and satisfaction that bars any further recovery." *Kimmel v. SAFECO Ins. Co.*, 116 Md. App. 346, 357 (1997). To

show that accord and satisfaction bars recovery, a moving party must prove "1) that a dispute arose between the parties about the existence or extent of liability; 2) that, after the dispute arose, the parties entered into an agreement to compromise and settled the dispute by the payment by one party of a sum greater than that which he admits he owes and the acceptance by the other party of a sum less than that which he claims is due; and 3) that the parties performed that agreement." *Wickman v. Kane*, 136 Md. App. 554, 561 (2001).

Here, there was no agreement between the parties regarding the OAH's subject matter jurisdiction over Mr. Walker's May 9, 2017 complaint. Therefore, the doctrine of accord and satisfaction cannot apply here. Though we have previously held that Centre satisfied the settlement agreement when it sent the $145,000 directly to Chase Manhattan, and that any claims that asserted otherwise were barred by accord and satisfaction, *Walker v. Centre Ins. Co., et al.*, No. 352 Sept. Term 2006 (filed: October 3, 2007), that holding did not prevent future litigation based on a new alleged breach of the settlement agreement.

CONCLUSION

Because Centre's motion to dismiss did not raise grounds sufficient to defeat Mr. Walker's right to judicial review, the circuit court erred in dismissing the action. We, therefore, vacate the dismissal of Mr. Walker's petition for judicial review and remand this case to the circuit court for judicial review, consistent with Maryland Rules 7-201 through 7-210, of the ALJ's finding that the OAH did not have subject matter jurisdiction over the issues raised in Mr. Walker's May 9, 2017 complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED AND REMANDED FOR JUDICIAL REVIEW CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.