

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SC-06-002

In re: 1433 T. St., N.W., 201-210 16th St., N.E., and 1840 & 1846 Vernon St., N.W.

Wards Two (2), Six (6), and One (1)

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT –
RENTAL ACCOMMODATIONS DIVISION,
Petitioner/Appellant,**

v.

**1433 T STREET ASSOCIATES, LLC;
210 16TH STREET ASSOCIATES, LLC; and
1840 VERNON STREET ASSOCIATES, LLC,
Housing Providers/Appellees**

ORDER ON RE-HEARING

June 16, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal from the District of Columbia (D.C.) Office of Administrative Hearings (OAH) to the Rental Housing Commission (Commission), based on a petition filed in the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01 -3509.07 (2001), the District of Columbia Administrative Procedure Act

¹ OAH assumed jurisdiction over petitions from the RACD pursuant to § 6(b-1)(1) of the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of the RACD were transferred to the Department of Housing and Community Development (DHCD), Rental Accommodations Division (RAD) by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

(DCAPA), D.C. OFFICIAL CODE §§ 2-501 -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), and 14 DCMR §§ 3800-4399 (2004), govern these proceedings.

This case is before the Commission pursuant to a notice of appeal filed by the Acting Rent Administrator, Rental Accommodations Division (RAD) on April 29, 2009. On May 15, 2009, the Commission issued a Notice of Scheduled Hearing, setting a hearing on this matter for July 14, 2009, at 11:00 a.m. at the Commission's former office at 941 North Capitol St., N.E., Suite 9200. The Commission's records reflect that both parties appeared then through counsel.

The Commission's rules provide in relevant part, as follows:

3820 TAPE RECORDINGS

3820.1 The entire proceedings of hearings on motions and appeals shall be recorded on tape, which shall remain in the custody of the Commission at all times.

3820.2 At the request of a party to an appeal, the Commission shall make a duplicate tape which the party may hear without charge, or which the party may purchase at cost.

14 DCMR § 3820 (2004) (emphasis added).² Moreover, an administrative agency is required to certify and file the exclusive record for decision and any supplementary proceedings with the D.C. Court of Appeals in the event an aggrieved party seeks judicial review in that Court. D.C. OFFICIAL CODE § 2-510(a) (2001).

Due to a recording equipment failure, the Commission does not have an audio recording of the July 14, 2009, hearing in its possession. To assure that there is no prejudice to any party, that a fair review on appeal has not been frustrated, and that no substantial rights of either party

² The Commission notes that, since the original promulgation of this rule on March 7, 1986, *see* 33 DCR 1336, the Commission has switched to a digital audio recording system, rather than analog tape.

have been adversely affected by the lack of an audio record of the Commission's hearing, *see, e.g., Egbuka v. U.S.*, 968 A.2d 511, 516 (D.C. 2009); *David v. U.S.*, 957 A.2d 4, 6-7 (D.C. 2008); *Cole v. U.S.*, 478 A.2d 277, 282 (D.C. 1984), and to comply with the Commission's obligation to preserve a complete record in this matter for any further appeal, it is hereby ORDERED that the Clerk of the Court will schedule this matter solely for re-hearing of oral arguments by the parties which will be exclusively limited to the issues presented in the Notice of Appeal and which shall not require or include the filing of any briefs by either party in addition to those already part of the Commission's record of this appeal.

It is FURTHER ORDERED that the parties hereto may jointly waive the right to a recorded hearing by mutual consent motion filed within ten (10) days of this Order, said time period to be computed in accordance with 14 DCMR § 3816.1-6 (2004).

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON RE-HEARING** in RH-SC-06-002 was mailed, postage prepaid, by first class U.S. mail on this **16th day of June, 2014** to:

Keith A. Anderson, Esq.
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A handwritten signature in black ink, appearing to read "LaTonya Miles". The signature is written in a cursive style with a large initial "L" and "M".

LaTonya Miles
Clerk of the Court
(202) 442-8949