DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,220 & RH-TP-06-28,649

In re: 3133 Connecticut Ave., N.W. Apt. 506

Ward Three (3)

DON WASSEM
Tenant/Appellant/Cross-Appellee

v.

B.F. SAUL COMPANY, TANYA MARHEFKA, & KLINGLE CORPORATION
Housing Providers/Appellees/Cross-Appellants

ORDER

March 31, 2016

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission ("Commission") from an [OAH], based on a petition filed with 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 ("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), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

[1] During the pendency of this case, the Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) on October 1, 2006, pursuant to § 6(b-1)(1) of the OAH Establishment Act, D.C. Law 16-83, D.C. OFFICIAL CODE § 2-1831.03(b-l)(l) (2012 Repl.). The functions and duties of RACD were transferred to DHCD by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.). Therefore, although this case originated with RACD, it was subsequently transferred to OAH. *See infra* at n.2.

I. PROCEDURAL HISTORY

On October 29, 2004, Tenant/Appellant/Cross-Appellee Don Wassem ("Tenant"), resident of 3133 Connecticut Avenue, NW, Apartment 506 ("Housing Accommodation"), filed Tenant Petition TP 28,220 with DCRA against Tanya Marhefka, B.F. Saul Company and the Klingle Corporation[2] (collectively, "Housing Provider"). TP 28,220 at 3; R. at 10.

On May 16, 2007, Administrative Law Judge Cobbs issued an Order consolidating RH-TP-06-28,220,[3] and RH-TP-06-28,649[4] (collectively, "Tenant Petition"). Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH May 16, 2007); R. at 1176-78.

Administrative Law Judge Erika Pierson ("ALJ") issued a Final Order on May 7, 2013: Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH May 7, 2013) ("Final Order"). R. at 2932-3066. On May 22, 2013, the Tenant filed a Motion for Reconsideration of the Final Order. R. at 3107-114.

The ALJ entered an Order Extending Time for Reconsideration on July 11, 2013, extending the forty-five days provided in 1 DCMR § 2828.6 for deciding a motion for reconsideration until August 9, 2013. Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH July 11, 2013) ("Order Extending Time"); R. at 3116. On August 5, 2013, the ALJ entered an Order Granting Tenant's Motion for Reconsideration, in Part, and Denying in Part. Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH Aug. 5, 2013) ("Order on Reconsideration"); R. at 3118-33. On the same date as the Order on Reconsideration,

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[2] The Commission notes that the Klingle Corporation was added as a housing provider in this matter on January 31, 2008, in an order granting the Tenant's motion to amend the Tenant Petition. Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH Jan. 31, 2008); R. at 1465-71.

[3] The Commission notes that when TP 28,220 was transferred to OAH it was renumbered as RH-TP-06-28,220.

[4] The Commission notes that TP 28,649 (later renumbered as RH-TP-06-28,649) was filed by the Tenant with RACD on June 8, 2006.

the ALJ also issued an Amended Final Order, reflecting the findings of fact and conclusions of law that had been amended by the Order on Reconsideration. Wassem v. Marhefka, RH-TP-06-28,220 & RH-TP-06-28,649 (OAH Aug. 5, 2013) (Amended Final Order); R. at 3134-269.

On May 22, 2013, the Tenant filed a Notice of Appeal of the Final Order (Tenant's May Notice of Appeal); on May 24, 2013, the Housing Provider filed a Notice of Appeal of Housing Provider/Appellants (Housing Provider's May Notice of Appeal). After the issuance of the Order on Reconsideration, the Housing Provider filed an Amended Notice of Appeal of Housing Provider/Appellants on August 9, 2013 ("Housing Provider's August Notice of Appeal"), and the Tenant filed a Second Notice of Appeal of Tenant-Petitioner on August 22, 2013 ("Tenant's August Notice of Appeal").

II. TIMELINESS OF NOTICES OF APPEAL

Under the Act and its regulations, the time limit for filing an appeal with the Commission is mandatory and jurisdictional. *See, e.g.*, Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Mar. 11, 2015); Allen v. L.C. City Vista LP, RH-TP-12-30,181 (RHC Apr. 29, 2014); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Feb. 28, 2014); Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012). Under 1 DCMR § 2828.3 (2011),[5] a party has ten calendar days from the issuance of a final decision, plus five days if the decision was mailed, to file a motion for reconsideration with OAH. 1 DCMR § 2812.5;[6] *see* 1 DCMR § 2938.1.[7] Alternatively,

[5] 1 DCMR § 2828.3 provides the following: "Within ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change the final order. Such a motion is a "motion for reconsideration or for a new hearing."

[6] 1 DCMR § 2812.5 provides the following: "When a party must act within a specified time period after service, and service is made by United States mail . . . five (5) calendar days are added after the period would otherwise expire[.]"

[7] 1 DCMR § 2938.1 provides the following: "Motions for reconsideration . . . shall be decided according to the Rules found in Section 2828."

under 14 DCMR § 3802.2, a party has ten days from the issuance of a final decision, not including intervening holidays or weekends, plus three days if the decision was mailed to file an appeal with the Commission. 14 DCMR §§ 3802.2 & 3816.3.[8]

If the party files a motion for reconsideration with OAH, an ALJ has forty-five calendar days to decide the motion, otherwise the motion is denied as a matter of law. 1 DCMR § 2828.15.[9] An ALJ may extend the time period once for deciding a motion for reconsideration before the initial forty-five day period expires. *Id.*

The time period for filing an appeal with the Commission does not begin to run until the ALJ decides the motion for reconsideration within the forty-five day time period (or within a timely thirty-day extension to decide the motion), or until the motion is denied as a matter of law. 1 DCMR §§ 2828.15 & 2938.2.[10] If an ALJ issues a decision on the motion for reconsideration after the motion has already been denied as a matter of law under 1 DCMR § 2828.15, the issuance of the decision has no effect on the time period for seeking judicial

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[8] 14 DCMR § 3802.2 provides the following: "A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator [or ALJ] is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed."

14 DCMR § 3816.3 provides the following: "When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

[9] 1 DCMR § 2828.15 provides the following:

> An Administrative Law Judge should rule on any motion filed under this Section within forty-five (45) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. An Administrative Law Judge may extend the period once for an additional thirty (30) calendar days by issuing an order before the first forty-five (45) day period expires. After expiration of any applicable deadline, the Administrative Law Judge, in his or her discretion, may issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

[10] 1 DCMR § 2938.2 provides the following:

> If a party files a motion for reconsideration . . . within the ten (10) calendar day deadline specified in Subsection 2828.3, an Order will not be final for purposes of appeal to the Commission until the Administrative Law Judge rules on the motion or the motion is denied as a matter of law under Subsection 2828.15.

review with the Commission. 1 DCMR § 2828.15; *see* Salazar v. Varner, RH-TP-09-29,645 (RHC June 16, 2015).

The Commission's review of the record in this case reveals that the Final Order was issued on May 7, 2013, and was served on the parties by mail. Final Order at 1, 135; R. at 2932, 3066. Therefore, in accordance with the regulations, the parties had ten calendar days, plus five days for mailing, or until May 22, 2013 to file a motion for reconsideration with OAH, or, in the alternative, ten days, excluding weekends and holidays, plus three days for mailing, or until May 24, 2013, to file an appeal with the Commission. 1 DCMR §§ 2812.5, 2828.3 & 2938.7; 14 DCMR §§ 3802.2 & 3816.3. The Tenant filed his for Motion for Reconsideration on May 22, 2013, within the time period prescribed by the regulations. 1 DCMR § 2937.1; Motion to Reconsider at 1; R. at 383. Thereafter, the ALJ had forty-five days, or until July 8, 2013, to act on the Motion for Reconsideration, otherwise the motion would be considered denied as a matter of law. 1 DCMR § 2828.15.

The Commission observes that the ALJ failed to take any action on the Motion for Reconsideration prior to July 8, 2013, and thus it was denied as a matter of law at the close of business on July 8, 2013, under 1 DCMR § 2828.15. Although the ALJ attempted to extend the time for deciding the Motion for Reconsideration, the Order Extending Time was dated July 11, 2013, three days after the Motion for Reconsideration was denied as a matter of law under the regulations. 1 DCMR § 2828.15. Therefore, the Commission determines that the ALJ failed to properly extend the forty-five day time period for deciding the Motion for Reconsideration. *Id.*

Moreover, the Commission notes that the ALJ's subsequent Order on Reconsideration was issued on August 5, 2013, nearly a month after the Motion for Reconsideration was denied as a matter of law. *Id.* Accordingly, the Commission determines that the ALJ erred: (1) by

granting any portion of the Motion for Reconsideration after it had been denied as a matter of law; and (2) by issuing the Amended Final Order. 1 DCMR § 2828.15; *see* Salazar, RH-TP-09-29,645. The Commission thus vacates the Order on Reconsideration and the Amended Final Order. 1 DCMR § 2828.15; *see* Salazar, RH-TP-09-29,645.[11]

Because the Motion for Reconsideration was denied as a matter of law on July 8, 2013, the parties had until July 25, 2013, to file a notice of appeal of the Final Order with the Commission. 1 DCMR §§ 2828.15 & 2938.2; 14 DCMR §§ 3802.2 & 3816.3. The Tenant's May Notice of Appeal was filed on May 22, 2013; the Housing Provider's May Notice of Appeal was filed on May 24, 2013; the Tenant's August Notice of Appeal was filed on August 22, 2013; and the Housing Provider's August Notice of Appeal was filed on August 9, 2013.

The Commission determines, based on its review of the record, that neither the Tenant's August Notice of Appeal nor the Housing Provider's August Notice of Appeal were timely with respect to the Final Order. 14 DCMR § 3802.2. Accordingly, the Commission lacks jurisdiction over any allegations of error contained in the untimely notices of appeal, and dismisses the Tenant's August Notice of Appeal and the Housing Provider's August Notice of Appeal. *See* Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.

The Commission observes that both the Tenant's May Notice of Appeal and the Housing Provider's May Notice of Appeal were timely with respect to the Final Order. 14 DCMR § 3802.2. Accordingly, the Commission will only address issues raised in the Tenant's May Notice of Appeal and the Housing Provider's May Notice of Appeal in all subsequent

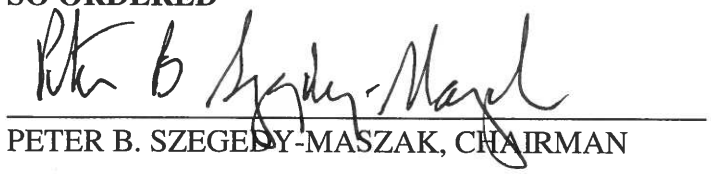
[11] The Commission observes that the ultimate outcomes in the Final Order (the subject of the parties' May notices of appeal) and the Amended Final Order (the subject of the parties' August notices of appeal) were identical—although the ALJ amended certain findings of fact and conclusions of law, she did not determine that the Tenant was entitled to any additional rent refunds, or that they Housing Provider was subject to any additional fines. *See* Order on Reconsideration at 3-11; R. at 3123-31. Therefore, it appears that the parties had adequate opportunity to challenge the merits of the ALJ's findings of fact and conclusions of law on the claims made in the Tenant Petition in their respective May notices of appeal.

proceedings on appeal in this case. *See* Allen, RH-TP-12-30,181; Kuratu, RH-TP-07-28,985; Shipe, RH-TP-08-29,411.[12]

III. CONCLUSION

Based on the foregoing, the Commission orders that the Tenant's August Notice of Appeal, and the Housing Provider's Notice of Appeal are hereby dismissed.

SO ORDERED



PETER B. SZEGEDY-MASZAK, CHAIRMAN

[12] The Commission notes that the Housing Provider's May Notice of Appeal appears identical to the Housing Provider's August Notice of Appeal. Compare Housing Provider's May Notice of Appeal, with Housing Provider's August Notice of Appeal. Additionally, although the Tenant's August Notice of Appeal contained thirty issues more than the Tenant's May Notice of Appeal, the Commission's review of both documents indicates that the issues raised in the Tenant's May Notice of Appeal comprehensively address the ALJ's rulings on each of the claims made in the Tenant Petition. Compare Tenant's May Notice of Appeal, with Tenant's August Notice of Appeal. The additional issues raised in the Tenant's August Notice of Appeal appear to be mostly in the nature of further explanation for the ALJ's errors, rather than additional, discrete, and independent claims of error. Compare Tenant's May Notice of Appeal, with Tenant's August Notice of Appeal.

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER** in RH-TP-06-28,220 & RH-TP-06-28,649 was served by first-class mail, postage prepaid, this **31st day of March, 2016**, to:

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