

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SF-09-20,098

In re: 2480 16th Street, NW

Ward One (1)

**RUDOLPH DOUGLAS, KOW HAGAN, ROBERT EBEL, TY MITCHELL,
ELEANOR JOHNSON, & PETER PETROPOULOS**
Tenants/Appellants/Cross-Appellees

v.

DORCHESTER HOUSE, ASSOCIATES, L.L.C.
Housing Provider/Appellee/Cross-Appellant

ORDER¹

July 10, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is before the Commission on three notices of appeal, as follows: (1) an August 1, 2011 Notice of Appeal filed by Tenants Kow Hagan, Robert Ebel, Ty Mitchell, Eleanor Johnson, and Peter Petropoulos, represented by Attorney B. Marian Chou; (2) an August 2, 2011 Notice of Appeal filed by Tenant Rudolph Douglas in his individual capacity; and (3) an August 25, 2012 Notice of Appeal filed by Dorchester House Associates, LLC (Housing Provider).

On July 7, 2015, the Commission received a Notice of Appearance, filed by Claude W. Roxborough, Esq., and Benoit Brookens,² requesting that the Commission note the appearance of

¹ This Order memorializes an oral order of the Commission to the parties hereto at the Commission hearing on July 8, 2015.

² The Commission notes that Benoit Brookens is not authorized to practice law, and represent clients accordingly, in the District of Columbia. *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120 (D.C. 1988). The Commission has dis-allowed Mr. Brookens to practice as an attorney in cases before the Commission. *See, e.g., Hagner Mgmt. Corp. v. Brookens*, TP 3788, (RHC Mar. 16, 1999). The Commission credits the representation of Mr. Roxborough at the Commission hearing on July 8, 2014 that Mr. Brookens is merely an employee of Mr. Roxborough's law firm and his sole and exclusive role in this appeal is to assist Mr. Roxborough's representation of Rudolph Douglas.

the law firm of Fowler and Roxborough, L.L.C., as the legal representative for Rudolph Douglas, a Tenant-party in this appeal. In its discretion, the Commission grants the request of Claude W. Roxborough to represent Rudolph Douglas in this appeal.

Also on July 7, 2015, Claude W. Roxborough filed a Motion or Continuance (Motion for Continuance) to an undetermined future date of the appellate hearing before the Commission scheduled in this appeal on July 8, 2015 at 11:00 a.m. on the grounds that Mr. Roxborough had just been retained by Mr. Dougals as legal representative and that he had “a previously scheduled hearing for 10 a.m. in Federal Bankruptcy Court that same day.”

According to 14 DCMR § 3815.1 (2004), in relevant part:

Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date . . .

According to 14 DCMR § 3815.2:

Motions shall set forth good cause for the relief requested.

According to 14 DCMR § 3815.3, in relevant part

Conflicting engagements of counsel . . . shall not be regarded as good cause for continuance unless set forth promptly after the notice of hearing has been given.

The Commission’s review of the record in this case indicates that the Motion for Continuance was filed only one (1) day before the hearing date and claimed (apparently as grounds for “good cause”) that Mr. Roxborough had just been retained by Mr. Douglas and that a conflicting engagement at “Federal Bankruptcy Court” would prevent him from attending the hearing. The Commission observes that Mr. Roxborough actually attended the Commission hearing on July 8, 2015 and renewed his Motion for Continuance, primarily on the grounds that he had just been retained as counsel by Mr. Douglas.

The Commission also notes that each of the tenants who appeared at the Commission hearing on July 8, 2015 – namely, Peter Petropoulos and Eleanor Johnson³ - also requested a continuance of the Commission hearing on a variety of grounds including insufficient time to prepare for the hearing, inability to present their arguments at the hearing in an organized and otherwise sufficient manner, chronic medical conditions, inability to retain adequate legal representation, restrictive conditions of their respective apartments and the continuing issues arising from their representation by an attorney in prior proceedings who no longer represents the Tenants.

It is well established that administrative tribunals, like the Commission, ““must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.”” Prime v. D.C. Dep’t of Pub. Works, 955 A 2d 178, 182 (D.C. 2008) (quoting Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977)). *See also* Smith Prop. Holdings Five (D.C.) L.P. v. Morris, RH-TP-06-28,794 (RHC May 22, 2014); KMG Mgmt., LLC v. Richardson, RH-TP-12-30,230 (RHC Jan. 28, 2014). Continuances are committed to the discretion of the Commission. Shipe v. Carter, RH-TP-08-29,411 (RHC Oct. 1, 2009); Tenants of 2300 and 2330 Good Hope Rd, S.E., v. Marbury Plaza, L.L.C., CI 20,753 and CI 20,754 (RHC Feb. 6, 2009).

With respect to Mr. Roxborough’s request for continuance, the Commission in its reasonable discretion determines that he did not demonstrate good cause as required by 14 DCMR § 3815.1. The Commission was provided with no reasonable or otherwise sufficient evidentiary grounds to support the retention of Mr. Roxborough only one (1) day before the

³ Hans Ebel, the Personal Representative of the deceased Tenant Robert Ebel, appeared at the Commission’s hearing. He made no specific, direct request for a continuance, but essentially joined the other Tenants in their grounds for requesting a continuance. Kow Hagan and Ty Mitchell did not attend the Commission hearing.

Commission hearing, when the Commission's review of the record of this appeal unambiguously indicates that Mr. Douglas has had ample time and opportunity to retain counsel at any point from the inception of hearings in this appeal in 2015. *See Shipe*, RH-TP-08-29,411; Tenants of 2300 and 2330 Good Hope Rd, S.E., CI 20,753 and CI 20,754. Furthermore, while Mr. Roxborough's attendance at the Commission hearing on July 8, 2015 rendered moot his claim of a conflicting engagement at the Federal Bankruptcy Court, the Commission would have disallowed the claimed conflicting engagement in any case as a ground for continuance under 14 DCMR § 3815.3.

With respect to the requests for continuance by Peter Petropoulos and Eleanor Johnson, while the Commission sympathizes with their concerns, the Commission is unable to conclude that the grounds that they provided for a continuance constitute "good cause." Both Peter Petropoulos and Eleanor Johnson cited grounds for good cause that have persisted for a considerable period of time during their tenancies, some even before the OAH hearing in this case. The tenants have had ample opportunity to retain counsel in this case, or to seek other assistance in the preparation of their legal arguments in this appeal. The medical condition cited by Eleanor Johnson is described as "chronic," and has been admittedly so throughout both the OAH and the Commission's hearing process. The Commission recognizes that it is most regrettable that such a medical condition has persisted for a considerable period of time for Ms. Johnson, but the Commission is unable to conclude that the chronic nature of Ms. Johnson's medical condition provides sufficient good cause as raised and described at its hearing to warrant a continuance. Issues arising from the Tenants' occupancy of their units at the Housing Accommodation or from prior representation by an attorney who is no longer retained similarly do not constitute "good cause." Finally, the Commission notes that the Tenants also have had

ample time and opportunity to seek continuances in compliance with 14 DCMR § 3815, without waiting to the day of the Commission's hearing to raise the issues that could have been reasonably raised well before the hearing date.

Accordingly, the Commission denies the Motion for Continuance by Mr. Roxborough, and the motions for continuance by Peter Petropoulos and Eleanor Johnson. *See* 14 DCMR §§ 3815.1,-.3.

However, in recognition of the importance of both the legal representation of Mr. Douglas' interests as a Tenant by counsel,⁴ and the provision of reasonable opportunity to Mr. Roxborough to familiarize himself with, and present his client's position on, the legal issues in this appeal, the Commission hereby grants Mr. Roxborough until COB on Thursday, July 16, 2015 to submit a Memorandum of Law to the Commission at its offices on the issues raised in the Notice of Appeal in this case. The Commission notes that, although Mr. Douglas has already filed a brief with the Commission in this case, he was not represented by legal counsel at that time.⁵ In the exercise of its reasonable discretion, the Commission determines that, while a continuance of its hearing is not warranted by Mr. Roxborough's claims, it is in keeping with the

⁴ “[A] tenant who litigates a meritorious claim under this statutory scheme acts not only on his own behalf, but also as a private attorney general vindicating the rights of persons of low or moderate income to afford remedial housing.” Goodman v. D.C. Rental Hous. Comm’n, 573 A.2d at 1297, 1299 (D.C. 1990); United Dominion Mgmt Co v. Hinman, RH-TP-06-28,728 (RHC June 5, 2013).

⁵ Mr. Douglas filed the brief along with two former tenants of the Housing Accommodation: Campbell Johnson and Benoit Brookens. Neither Campbell Johnson nor Benoit Brookens is a party in this appeal.

remedial purposes of the Act⁶ and considerations of due process⁷ that he shall be allowed to submit a written Memorandum of Law on the issues in the Notice of Appeal in a reasonable time period.

In recognition of the concerns expressed by Peter Petropoulos and Eleanor Johnson in their request for a continuance of the Commission hearing, the Commission hereby grants Peter Petropoulos, Eleanor Johnson, Kow Hagan, Ty Mitchell and Hans Ebel (as Personal Representative for Robert Ebel) until COB on Thursday, July 16, 2015 to submit written testimony or a Memorandum of Law to the Commission at its offices on the issues raised in the Notice of Appeal in this case. Because Peter Petropoulos and Eleanor Johnson expressed significant concerns that they were not prepared to present their contentions at the Commission hearing, the Commission in the exercise of its reasonable discretion determines that each of the Tenants be provided a reasonable time period to prepare written testimony, or retain counsel to prepare a Memorandum of Law, on the issues raised in the Notice of Appeal in this case. The extended time period will also afford Hans Ebel (as Personal Representative for Robert Ebel), Kow Hagan and Ty Mitchell the opportunity to prepare written testimony or secure legal assistance for a Memorandum of Law. As with permitting Mr. Roxborough's submission,

⁶ The remedial purposes of the Act are intended "to protect low and moderate income tenants from the economic harm of uncontrolled increases in rents, and to maintain a sufficient stock of affordable rental units for such low and moderate income tenants in the District of Columbia." D.C. OFFICIAL CODE § 42-3501.02; *see, e.g., Goodman*, 573 A.2d at 1299-1300; *Carmel Partners, Inc. v. Levy*, RH-TP-06-28,830, RH-TP-06-28,835 (RHC Apr. 18, 2012); *1773 Lanier Place, N.W., Tenants' Ass'n v. Drell*, TP 27,344 (Sept. 9, 2009); *Borger Mgmt., Inc. v. Lee*, RH-TP-06-28,854 (RHC Mar. 6, 2009).

⁷ "[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances, but rather it is flexible and calls for such procedural protections as the particular situation demands." *Matthews v. Eldridge*, 424 U.S. 319, 334 (1976)) (quoted in *Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz*, 798 A.2d 531, 542 (D.C. 2002)).

it is in keeping with the remedial purposes of the Act⁸ and considerations of due process⁹ that each of the five (5) Tenants shall be allowed to submit written testimony or retain counsel for a Memorandum of Law on the issues in the Notice of Appeal in a reasonable time period.

Following the submission of a Memorandum of Law by Mr. Roxborough, and Memoranda of Law or written testimony by the aforementioned five (5) Tenants, the Housing Provider will be afforded the opportunity to submit reply Memoranda of Law in response to the respective submissions of Mr. Roxborough and the five (5) Tenants to the Commission by COB on Friday, July 24, 2015.

SO ORDERED.


PETER B. SZEGEDY-MASZAK, CHAIRMAN

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER** in RH-SF-09-20,098 was mailed, postage prepaid, by first class U.S. mail on this 10th day of July, 2015:

Richard W. Luchs, Esq.
Roger D. Luchs, Esq.
Greenstein Delorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, DC 20036-5605

Mr. Rudolph Douglas
2480 16th Street, N.W., Apt. 514
Washington, DC 20009

⁸ See *supra* n. 6.

⁹ See *supra* n. 7.

Claude Roxborough, Esq.
Law Offices of Fowler
and Roxborough, L.L.C.
705 Irving Street, N.W.
Washington, D.C. 20010

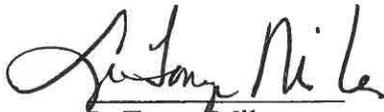
Peter Petropoulos
2480 16th Street, N.W., Apt. 108
Washington, DC 20009

Kow Hagan
2480 16th Street, N.W., Apt. 107
Washington, DC 20009

Robert Ebel
c/o Hans Ebel
14 Montgomery Dr.
Flemington, NJ 08822

Ty Mitchell
2480 16th Street, N.W., Apt. 133
Washington, DC 20009

Eleanor Johnson
2480 16th Street, N.W., Apt. 933
Washington, DC 20009



LaTonya Miles
Clerk of Court
(202) 442-8949