

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). In her “Second Motion to Withdraw as Represented Tenant’s [sic] Counsel, Except Attorney [sic] Fees” (Second Motion to Withdraw), filed on March 25, 2015, Attorney Chou represented that her client, Tenant Robert Ebel (Mr. Ebel) had died. *See* Second Motion to Withdraw at 2.

In an Order issued on April 10, 2015, the Commission determined that Attorney Chou’s Second Motion to Withdraw constituted a suggestion of the death of Robert Ebel, under D.C.

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

App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1).² Douglas v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Apr. 10, 2015) (April 10 Order); *see also* 14 DCMR § 3828.1 (2004);³ Hardy v. Jenkins, RH-TP-10-30,009 (RHC Mar. 29, 2012); Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011); Mersha v. Marina Towers Apartments Town Center Limited Partnership, TP 24,970 (RHC Feb. 19, 2003). The April 10 Order provided ninety (90) days, or until June 23, 2015, for a duly-appointed personal representative of Robert Ebel to file a motion for substitution, substituting the personal representative as a party to this case in lieu of Robert Ebel. April 10 Order at 3. The Commission cautioned that if no personal representative filed a motion for substitution by June 23, 2015, the Commission would dismiss Robert Ebel as a party to this appeal, *with prejudice. Id.*

The Commission observes that no motion for substitution was filed by Robert Ebel's personal representative, or otherwise, by June 23, 2015. In an Order issued June 23, 2015, the Commission dismissed Robert Ebel as a party to this appeal, *with prejudice*, and further ordered

² D.C. App. R. 43(a)(1) provides the following:

If a party dies after a notice of appeal has been filed or while a proceeding is pending in this court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

Super. Ct. Civ. R. 25(a)(1) provides the following:

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

³ 14 DCMR § 3828.1 provides the following:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

that his name be removed from the case caption of this appeal for all subsequent pleadings and orders. Douglas v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC June 23, 2015) (June 23 Order).

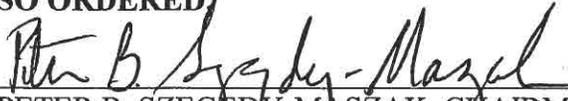
However, on July 2, 2015, the Commission was contacted by Hans Ebel, a cousin of Robert Ebel, who stated that he, Hans Ebel, was Robert Ebel's Personal Representative. Although the Commission's records indicate that the Commission complied with all notice requirements in the April 10 Order, including the Certificate of Service, Hans Ebel represented that he had not received the April 10 Order by mail.

As proof of his status as personal representative, Hans Ebel submitted to the Commission at its appellate hearing in this appeal on July 8, 2015 both the original and a copy of a Final Order from the Probate Division of the District of Columbia Superior Court, dated May 27, 2015, approving the appointment of Hans Ebel as personal representative for Robert Ebel. *See In re: Small Estate of Robert C. Ebel*, 2015 SEB 139, 2015 WIL 305 (D.C. Super. Ct. May 27, 2015).

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). In the exercise of its reasonable discretion, the Commission credits the testimony and evidence of Hans Ebel that he is the personal representative of Robert Ebel, and that he did not receive notice of the April 10 Order.

Accordingly, the Commission vacates its June 23 Order, affirms and ratifies that Robert Ebel (through Hans Ebel as Personal Representative of Robert Ebel) retains party status as a Tenant/Appellant/Cross-Appellee in this appeal, and that the name of Robert Ebel (through Hans Ebel as Personal Representative of Robert Ebel) will remain in the case caption of this appeal for all subsequent pleadings and orders.

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:

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