DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

HP 20,812

In re: 4021 9th St., N.W.

Ward Four (4)

TENANTS OF 4021 9th STREET, N.W.
Tenants/Appellants

v.

E & J PROPERTIES, LLC
Housing Provider/Appellee

ORDER ON MOTION TO DISMISS

June 11, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from an Order issued by the Rent Administrator, based on a petition filed in the District of Columbia Department of Consumer & Regulatory Affairs (DCRA), Housing Regulation Administration (HRA).[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 (Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR

[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of DCRA on October 1, 2006 pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (Supp. 2005). The functions and duties of RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (Supp. 2008)).

§§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On June 28, 2007, Housing Provider/Appellee E & J Properties, LLC (Housing Provider) filed hardship petition HP 20,812 (Hardship Petition) with the Rent Administrator related to the property located at 4021 9th St., N.W. (Housing Accommodation).[2] Hardship Petition at 1; Record for HP 20,812 (R.) at 114. On February 22, 2008,[3] Grayce Wiggins, Acting Rent Administrator (Initial Acting Rent Administrator) issued an "Order Granting Hardship Petition in Part Based on Audit Report Findings and Conclusions and Statutory Right to File Exceptions and Objections," E&J Props., LLC v. Tenants of 4021 9th St., NW, HP 20,812 (RAD Feb. 22, 2008) (Order Granting Hardship Petition).[4] The Order Granting Hardship Petition determined that the Housing Provider had failed to carry the burden of proving the claim of hardship needed for approval of the entire 29% rent adjustment requested, and instead granted an increase in the amount of 1.1%. *See* Order Granting Hardship Petition at 2-3; R. at 168-69. The Order Granting

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[2] The Act's hardship petition provisions are contained generally in D.C. OFFICIAL CODE § 42-3502.12 (2001) and 14 DCMR § 4209 (2004). The Commission notes that the Hardship Petition at issue in this case was filed after the Act was amended, effective August 5, 2006, by the "Rent Control Reform Amendment Act of 2006," D.C. Law 16-145 (Aug. 5, 2006), which amended the Act by eliminating the term "rent ceiling," and in its place, substituting the term "rent charged." *See* D.C. Law 16-145 §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006).

[3] The February 22, 2008 Order Granting Hardship Petition had been previously issued on December 6, 2007; however, some of the tenants were not provided with copies of the December 6, 2007 order, so the Rent Administrator re-issued the order on February 22, 2008. *See* Order Granting Hardship Petition at 2; R. at 169.

[4] The Commission notes that the Order Granting Hardship Petition was issued well outside of the time period prescribed under 14 DCMR § 4209.20(d) ("The Rent Administrator shall consider and review the hardship petition and supporting documentation and, within twenty (20) days following the filing of the petition, shall issue and serve on the parties an audit report with recommendations regarding the acceptance or denial of expenditures and other financial claims and the final disposition of the hardship petition"). The Order Granting Hardship Petition is not the subject of this appeal.

Hardship Petition provided that the parties had until March 25, 2008 to file exceptions and objections, and that if no exceptions and objections were filed, the Order Granting Hardship Petition would become a final order on April 7, 2008. *See* Order Granting Hardship Petition at 1-4; R. at 125-28.[5]

On March 21, 2008, the Housing Provider filed Exceptions and Objections to the Order Granting Hardship Petition (Housing Provider's Exceptions and Objections). *See* Housing Provider's Exceptions and Objections at 2-3; R. at 331-32. On March 25, 2008, Tillman Peck, claiming to act on behalf of the Taylor Towers Tenant Association (Tenant Association), filed exceptions and objections to the Order Granting Hardship Petition. *See* Tenant Association's Exceptions and Objections at 1; R. at 341.[6]

On September 12, 2008, the current Acting Rent Administrator, Keith Anderson (Current Acting Rent Administrator) entered an Order (September 12 Order), summarily vacating the Order Granting Hardship Petition. *See* September 12 Order at 1-2; R. at 343-44. Although the September 12 Order did not contain findings of fact or conclusions of law, it contained the following language regarding the parties' exceptions and objections:

> After review of the audit report, the exceptions and objections, the Rent Administrator determined that HP 20,812 should be resubmitted to the auditor to

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[5] According to D.C. OFFICIAL CODE § 42-3502.12(c) (2001):

> (c) The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent ceiling adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, and the Rent Administrator by order served on the parties at least 10 days prior to the expiration of the 90 days, makes a provisional finding as to the rent ceiling adjustment justified by the petition, the housing provider may implement only the amount of the rent ceiling adjustment authorized by the order. Except to the extent modified by this subsection, the provisions of § 42-3502.16 shall apply to any adjustment under this section.

[6] The party status of the Tenant Association is addressed *infra* at pp. 11-12 and n.22.

consider additional documentation provided by Petitioners and Respondents pursuant to the Regulation 14 DCMR §[ ]4209.20 (2004).

Accordingly, the Rent Administrator hereby vacates the Order issued on February 22, 2008 in Hardship Petition 20,812.

On completion of the final audit, the Rent Administrator shall render a decision and order *de novo* on the merits in HP 20,812. The Rent Administrator's decision and order shall contain findings of fact and conclusions of law regarding the calculation of the amount of rent increase recommended, if any. The recommendation shall be based solely on HP 20,812 and the supporting documentation submitted by the Petitioners and Respondents.

Pending the issuance of the Rent Administrator's decision, the Housing Provider may take a provisional increase of 29%. This increase, however, is subject to the final outcome of the audit report.

September 12 Order at 2; R. at 343. On October 10, 2008, the Tenant Association, claiming to be represented by Tillman Peck, filed a Notice of Appeal (Notice of Appeal) with the Commission. *See* Notice of Appeal at 1. In their Notice of Appeal, the Tenant Association stated the following:

1. On September 26, 2008, we filed a Motion for Reconsideration of the September 12 Decision and Order. To date, we have not received any correspondence related to that Motion.

2. In the September 12, 2008 Order, no reason is given for vacating the February 2008 Order regarding same Petition.

3. In landlords' [sic] filing of Exceptions and Objections to Rent Administrator's December 2007 Order, landlord apparently no longer sought a 29% rent increase. Rather, the revised request seemed to be capped at no more than 8.28%.

4. The February 22, 2008 order being "Vacated" was signed by Rent Administrator Grayce Wiggins. The removal of Grayce Wiggins from the position of Rent Administrator is a matter of great public and political controversy at the moment. Seeing that we, too, are deeply concerned over this matter, we would urge that the Orders signed by Grayce Wiggins not be

disturbed pending the resolution of the highly-politically-charged atmosphere and the issues surrounding her removal.

5. Were the September 12, 2008 order to stand, the tenants would be harmed financially.

Notice of Appeal at 1. On March 26, 2009, the Housing Provider filed a Motion to Dismiss Appeal (Motion to Dismiss), based on the following two (2) grounds: (1) "the Tenant Association never submitted evidence that it met the [Commission's] requirements for a tenant association to be a party to a proceeding;" and (2) "the September 12 Order is interlocutory."[7] *See* Motion to Dismiss at 2-3. The Tenant Association filed a response (Response to Motion to Dismiss) on April 10, 2009, asserting that the Tenant Association's records "reflect that Association members occupied a majority of the apartments of [the Housing Accommodation] at the time the tenants received notice of the landlord's [H]ardship [P]etition," and that the September 12 Order was a final order on the question of the tenants' rent levels pending further proceedings. *See* Response to Motion to Dismiss at 1-2.

The Commission held a hearing in this matter on April 21, 2009.

II. DISCUSSION OF THE MOTION TO DISMISS[8]

[7] The Commission notes that an "interlocutory order" is defined as "[a]n order that relates to some intermediate matter in the case; any order other than a final order." BLACK'S LAW DICTIONARY 1130 (8th ed. 2004). Interlocutory orders have been described as "those made during the pendency of an action that do not dispose of the case, but instead leave it for further action by the trial court to settle and determine the entire controversy." 4 Am. Jur. 2d *Appellate Review* § 85.

[8] In assessing the Motion to Dismiss, the Commission is mindful of the important role that lay litigants play in the Act's enforcement. *See, e.g.*, Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Cohen v. D.C. Rental Hous. Comm'n, 496 A.2d 603, 605 (D.C. 1985). Courts have long recognized that *pro se* litigants can face considerable challenges in prosecuting their claims without legal assistance. *See* Kissi v. Hardesty, 3 A.3d 1125, 1131 (D.C. 2010) (citing Hudson v. Hardy, 412 F.2d 1091, 1094 (D.C. Cir. 1968)). Nonetheless, "while it is true that a court must construe *pro se* pleadings liberally . . . the court may not act as counsel for either litigant." *See* Flax v. Schertler, 935 A.2d 1091, 1107 n.14 (D.C. 2007) (quoting In re Webb, 212 B.R. 320, 321 (Bankr. Fed. App. 1997)). As the District of Columbia Court of Appeals (DCCA) has asserted, a *pro se* litigant "cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." *See* Macleod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) (quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1993)).

The Commission's standard of review is contained at 14 DCMR § 3807.1 (2004) and states the following:

> The Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contain conclusions of law not in accordance with the provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

A. Whether the September 12 Order is a final, appealable order.

The Housing Provider contends that the September 12 Order is not a dispositive, final order, because it does not "impose an obligation, deny a right or fix some legal relation as a consummation of the administrative process." Motion to Dismiss at 3 (quoting Tenants of 2480 16th St., N.W. v. Hagner Mgmt. Corp., TP 20,326 & TP 20,221 (RHC Mar. 15, 1989)). The Housing Provider's position is that none of the tenants has been aggrieved, because, despite a provisional rent increase, there is no final order setting the amount of a final rent increase, if any, resulting from the Hardship Petition. *See id.*

In response, Mr. Peck averred that the September 12 Order was a final order, because it "awarded a 29% rent increase to [Housing Provider] pending further procedures." *See* Response to Motion to Dismiss at 2.

Under 14 DCMR § 4209.20(d), within twenty (20) days following the filing of a hardship petition, the Rent Administrator "shall issue and serve on the parties an audit report with recommendations regarding the acceptance or denial of expenditures and other financial claims, and the final disposition of the hardship petition." Under 14 DCMR § 4209.20(f)(1), each party has thirty (30) days to file exceptions to the "specific findings, conclusions, and calculations" in

the audit report.[9] Under 14 DCMR § 4209.20(f)(2), the Order Granting Hardship Petition becomes a final order if neither party filed timely exceptions and objections.[10] Under 14 DCMR § 4209.20(f)(3), if a party files exceptions and objections in a timely manner, a hearing limited to the exceptions and objections must be held within forty-five (45) days after the issuance of the audit report.[11] 14 DCMR § 4209.20(f)(3). The regulations further provide that, even after a hearing on exceptions and objections, the Order Granting Hardship Petition will remain provisional,[12] until such time as a final order on the Hardship Petition issued. *See* 14 DCMR § 4209.20(h).[13]

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[9] 14 DCMR § 4209.20(f) (2004) provides the following:

> Simultaneously with service of the audit report, the Rent Administrator shall notify each party as follows:
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> (1) That the party shall have thirty (30) days in which to file with the Rent Administrator and serve on all other parties, written exceptions and/or objections to specific findings, conclusions, and calculations of the audit report.
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> (2) That, in the absence of timely filed exceptions and/or objections, the audit report and recommendations shall become a final order forty-five (45) days after its issuance; and
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> (3) If exceptions or objections are filed, a hearing limited to the exceptions or objections shall be held within forty-five (45) days after issuance of the audit report.

[10] *See supra* at n.9.

[11] *See supra* at n.9.

[12] The Commission notes that the term "provisional" is defined as "temporary" or "conditional." BLACK'S LAW DICTIONARY 1262 (8th ed. 2004). *See infra* p. 11 n.21.

[13] 14 DCMR § 4209.20(h) provides the following (emphasis added):

> Any hearing on a hardship petition required to be held by this section shall be held no later than ninety (90) days following the date of filing of the hardship petition, and the Rent Administrator's audit report and recommendation may after the hearing be deemed the "provisional finding" under § 212(c) of the Act for the purposes of authorizing a provisional rent ceiling adjustment.

The Commission has consistently held that it only has jurisdiction over "final orders." *See* 14 DCMR § 3802.1.[14] *See also, e.g.* Hemond v. Smith Prop. Holdings Three (D.C.) L.P., RH-TP-06-28,222 (RHC Sept. 11, 2012); (quoting LaPrade v. Klingberg, TP 27,920 (RHC Jan. 2, 2004)); Smith Prop. Holdings Three (D.C.) L.P. v. Martin, RH-TP-06-28,322 (RHC Sept. 11, 2012); Burnett v. Sharma, TP 27,680 (RHC Oct. 16, 2003); Toomey v. Kramer, T/P 22,642 (RHC Mar. 27, 1992). In other words, the Commission is without jurisdiction over an appeal "unless the order appealed from disposes of all issues in the case; it must be final as to all the parties, the whole subject matter, and all of the causes of action involved." *See* Hemond, RH-TP-06-28,222; LaPrade, TP 27,920 (citing Davis v. Davis, 663 A.2d 499, 503 (D.C. 1995)); Smith Property Holdings Three (D.C.) L.P., RH-TP-06-28,322 (dismissing housing provider's appeal because order denying motion to certify interlocutory appeal was a non-final order); Burnett, TP 27,680 (deciding that Commission lacked jurisdiction to hear appeal from hearing examiner's order to stay the proceedings, because the order was not a final order); Toomey, T/P 22,642 (granting motion to dismiss tenant's notice of appeal from an oral ruling made at the hearing, because the oral ruling was not a final decision, and tenant failed to seek certification for an interlocutory appeal).

The Commission's review of the record in this case indicates the following. First, both parties filed timely exceptions and objections following the issuance of the audit report and the Order Granting Hardship Petition. *See* 14 DCMR § 4209.20(f)(1). *See also* Housing Provider's Exceptions and Objections at 2-3; Tenant Association's Exceptions and Objections at 1; R. at

[14] 14 DCMR § 3802.1 provides the following: "Any party aggrieved by a final decision of the Rent Administrator may obtain review of that decision by filing a notice of appeal with the Commission."

331-32, 341. Second, the OAH failed to hold a required hearing on the exceptions and objections. *See* 14 DCMR § 4209.20(f)(3).[15] Third, the Current Acting Rent Administrator, as the immediate successor of the Initial Acting Rent Administrator,[16] summarily vacated the Order Granting Hardship Petition by means of the September 12 Order. *See* R. at 343-44. Finally, the Current Acting Rent Administrator requested that the Hardship Petition be re-submitted to the auditor for consideration of additional information to be provided by both parties under the authority of 14 DCMR § 4209.20, thereby allowing the Current Acting Rent Administrator to render a *de novo* decision upon completion of a new or revised audit. *See* September 12 Order at 2; R. at 343.

Based on its review of the applicable provisions of the Act and the record, the Commission determines that the September 12 Order that forms the basis of this appeal is not "final as to all the parties, the whole subject matter, and all of the causes of action involved," because no "final order" had been issued on the Hardship Petition, which has approved the amount of any non-provisional, final rent increase for all of the residents of the Housing Accommodation.[17] *See* Hemond, RH-TP-06-28,222; LaPrade TP 27,920 Martin, RH-TP-06-28,322; Burnett, TP 27,680; Toomey, T/P 22,642. The Commission's determination is based

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[15] Under the OAH Establishment Act, *see supra* at p. 1 n.1, the jurisdiction of the Rent Administrator to hold a hearing on hardship petitions if exceptions or objections are filed (under 14 DCMR § 4209.20(f)(3)) was transferred to OAH. *See* D.C. OFFICIAL CODE §2933 2-1831.03(b-1)(1) (" . . . as of October 1, 2006, this chapter shall apply to adjudicated cases under the jurisdiction of the Rent Administrator . . . "), § 42-3502.12(c) (Supp. 2008).

[16] The Commission's review of the record does not provide any relevant information regarding the change of Rent Administrators in the course of the proceedings on this Hardship Petition.

[17] The Commission observes that while the September 12 Order may at least, arguably, be characterized as "final" insofar as it vacated the Order Granting Hardship Petition, the Commission is satisfied that it was not a "final" order for purposes of 14 DCMR § 3802.1 because it did not dispose of all issues in the case, and wasn't final as to "all the parties, the whole subject matter, and all of the causes of action involved." *See* Hemond, RH-TP-06-28,222; Martin, RH-TP-06-28,322; Burnett, TP 27,680; Toomey, T/P 22,642.

upon the following considerations regarding applicable provisions of the Act and its regulations, as well as case law precedent.

The Commission's review of the record indicates that both parties filed timely exceptions and objections,[18] and that the Order Granting Hardship Petition remained provisional, pending an OAH hearing on the exceptions and objections.[19] *See* 14 DCMR § 4209.20(f)(3). The record indicates that the required OAH hearing on the Order Granting Hardship Petition was not held, leaving in place the provisional status of the rent increase under the Act. *See id.* Furthermore, the Act's regulations provide that, even after a hearing on exceptions and objections, the Order Granting Hardship Petition would remain provisional, until such time as a final order on the Hardship Petition was issued by the Rent Administrator. *See* 14 DCMR § 4209.20(h).[20] Finally, the Commission's review of the Act and applicable case law does not indicate that the Current Acting Rent Administrator's summary action in vacating the Order Granting Hardship Petition in

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[18] As noted *supra* at p. 7 and n.9, under 14 DCMR § 4209.20(f)(2), the Order Granting Hardship Petition would have become a final order if neither party filed timely exceptions and objections.

[19] As noted herein, the Commission's review of the record reveals that no hearing was held either on the exceptions and objections filed by the parties in this case, as required by 14 DCMR § 4209.20(f)(3) (*see supra* at p. 7 n.9), or on the September 12 Order vacating the Order Granting Hardship Petition, raising serious due process concerns for the Commission. The Commission is particularly troubled by the dramatic increase in the provisional rent in the September 12 Order (29%) in comparison to that in the Order Granting Hardship Petition (1.1%) in the absence of any hearing or explanation in the record regarding the increase by the Current Acting Rent Administrator. However, as discussed herein, in the absence of a "final order" under Commission jurisprudence, the Commission is without jurisdiction to reach this issue in the context of this appeal. *See supra* at 6-8. Nevertheless, the Commission notes that, when the Rent Administrator receives the report from the auditor and issues a provisional order on the Hardship Petition, the parties may file exceptions and objections to that order, at which time they will be entitled to a hearing under 14 DCMR § 4209.20(f)(3).

[20] 14 DCMR § 4209.20(h) provides the following (emphasis added):

> Any hearing on a hardship petition required to be held by this section shall be held no later than ninety (90) days following the date of filing of the hardship petition, and the Rent Administrator's audit report and recommendation may after the hearing be deemed the "provisional finding" under § 212(c) of the Act for the purposes of authorizing a provision rent ceiling adjustment.

his September 12 Order, albeit not addressed by the procedures contained in 14 DCMR § 4209.20, altered the provisional nature of the September 12 Order on the Hardship Petition under the Act, and thus the September 12 Order did not constitute a "final order" under the Commission's legal standards. *See, e.g.,* 14 DCMR §§ 4209.20(d), (f), (h); Tenants of 1755 N St., N.W. v. N St. Follies Ltd. P'ship, HP 20,746 (RHC June 21, 2000); Fazekas v. Eleventh St., N.W. Assocs., TP 20,394 (RHC Aug. 16, 1993). *See also* Hemond, RH-TP-06-28,222; Martin, RH-TP-06-28,322; Burnett, TP 27,680; Toomey, T/P 22,642.

Accordingly, on the basis of the "plain meaning"[21] of the language of applicable provisions of the Act and its regulations as well as persuasive case precedent, the Commission determines that the September 12 Order was a provisional order, and not a final order, regarding the appropriate amount of a rent increase for all the tenants in the Housing Accommodation resulting from the Hardship Petition, and thus the Commission lacks jurisdiction under the Act to consider the merits of the instant appeal of the September 12 Order. *See* 14 DCMR §§ 4209.20(d), (f), (h); Hemond, RH-TP-06-28,222; Martin, RH-TP-06-28,322; Burnett, TP 27,680; Toomey, T/P 22,642.

B. Whether the Tenant Association complied with the requirements to become a party to the case.

Insofar as the Commission in addressing Issue A has determined that it lacks jurisdiction over this appeal in the absence of the "finality" of the September 12 Order as discussed *supra* at

[21] The DCCA has explained that a court must look at the "plain meaning" of the words of a statute or regulation when the words are clear and unambiguous, and construe the words according to their ordinary sense and with the meaning commonly attributed to them. *See* District of Columbia v. Edison Place, 892 A.2d 1108, 1111 (D.C. 2006). *See also* Dorchester House Assocs. Ltd. P'ship v. D.C. Rental Hous. Comm'n, 938 A.2d 696, 702 (D.C. 2007); Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Carpenter v. Markswright Co., RH-TP-10-29,840 (RHC June 5, 2013). The Commission's interpretation of the text of the critical regulations at issue governing hardship petitions contained in 14 DCMR §§ 4209.20(d)-(f), *see supra* at 6-13, is predicated upon its application of the "plain meaning" standard of review, for example with respect to the term "provisional." *See supra* p.7 n.12. *See, e.g.,* District of Columbia v. Edison Place, 892 A.2d at 1111; Dorchester House Assocs. Ltd. P'ship, 938 A.2d at 702; Bower, TP 27,838; Carpenter, RH-TP-10-29,840.

6-11, this issue is moot.[22] *See, e.g.*, Knight-Bey v. Henderson, RH-TP-07-28,888 (RHC Jan. 8, 2013) (where tenant/petitioner fails to appear at hearing, failure to afford due process through proper notice of hearing to housing provider/respondent is moot); Kuratu v. Ahmed, Inc., RH-

[22] Although the Commission has determined this issue to be moot, the Commission nonetheless deems "standing" issues of tenant associations to raise relevant personal jurisdiction issues and to otherwise be of substantial importance under the Act. *See* Borger Mgmt., Inc. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009). In accordance with the Commission's precedent in Borger Mgmt., Inc., RH-TP-06-28,854, Mr. Peck, who filed the exceptions and objections and the Notice of Appeal on behalf of the Tenant Association and also appeared before the Commission, was the only tenant in this appeal with individual standing as a "party aggrieved," but not in a representative capacity for the Tenant Association. *See* 14 DCMR § 3802.1; Borger Mgmt., Inc., RH-TP-06-28,854 (citing Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1288 (D.C. 1994)).

The Act's regulations provide the following regarding the appearance of a tenant association as a party to a case:

> 3904.2 If a tenant association seeks to be a party, the hearing examiner shall determine the identity and number of tenants who are represented by the association.
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> 3904.3 If a majority of the tenants are represented by the association, the association shall be listed in the caption.
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> 4004.1 In any proceeding, the following appearances may be made: . . . (d) A member selected by the members of an association or an employee of the association, a group of tenants or non-profit corporation may represent the association, group or non-profit corporation.
>
> 4004.3 Any person appearing before, or transacting business with, RACD in a representative capacity may be required to establish authority to act in that capacity.

14 DCMR §§ 3904.2-.3, 4004.1, -.3.

In Borger Mgmt., Inc., RH-TP-06-28,854, the Commission applied the above standards of 14 DCMR §§ 3904.2 -.3, §§ 4004.1, -.3 to the appearance of a tenant association as a party in a case. Consistent with its standards from Borger Mgmt., Inc., the Commission's review of the record in this case did not reveal sufficient evidence of (1) the identity and number of tenants in the Tenant Association, (2) written authorization by a majority of the tenants that the Tenant Association was their representative in this case, (3) Mr. Peck's authorization by the Tenant Association to act as its representative, and (4) the request by the Tenant Association for party status. *See* 14 DCMR §§ 3904.2 -.3, §§ 4004.1, -.3. *See also,* Tenant Association's Exceptions and Objections; R. at 34. *See generally,* Borger Mgmt., Inc., RH-TP-06-28,854. Without party status in the HRA proceedings, a Tenant Association lacks standing as a "party aggrieved" under the Commission's regulations. *See* 14 DCMR § 3802.1; Borger Mgmt., Inc., RH-TP-06-28,854.

Nonetheless, while the Commission's regulations and case precedent indicate that Mr. Peck is the only Tenant-party with standing in this appeal, all other tenants of the Housing Accommodation whom Mr. Peck claimed to represent may always seek to join the Hardship Petition case with the approval of the Acting Current Rent Administrator under 14 DCMR § 3906 either as members of a duly formed Tenant Association in compliance with 14 DCMR §§ 3904.2-.3, 4004.1,-.3and any other applicable laws and regulations or individually in his/her own name as a tenant of the Housing Accommodation in compliance with the requirements established in Borger Mgmt., Inc., RH-TP-06-28,854.

TP-07-28,985 (RHC Jan. 29, 2012) (where case remanded to determine remedy for violation of registration provision of the Act, issue of notice to tenant of reduction in services was moot on appeal); Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005) (dismissing issue as moot where there was no further relief the Commission could grant).

II. CONCLUSION

For the foregoing reasons, the Housing Provider's Motion to Dismiss is granted, and the Notice of Appeal is hereby dismissed.[23]

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

[23] In addition to serious issues described *supra* at p. 10 n.19, the Commission notes with significant concern an apparently inherent inequity in the hardship petition process as currently contained in the Act and its regulations. *See* D.C. OFFICIAL CODE § 42-3502.12; 14 DCMR § 4209. For example, a housing provider is permitted to conditionally take the rent charged adjustment requested in the hardship petition if the Rent Administrator does not issue a decision within 90 days from the date the hardship petition is filed. *See* D.C. OFFICIAL CODE § 42-3502.12(c) (. . . "If the Rent Administrator does not render a final decision within 90 days from the date the [hardship] petition is filed, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider."). However, a tenant is not allowed to challenge any of the information contained in the hardship petition, including the provisional rent increase amount, until an audit is completed by an RAD auditor, the audit report is reviewed by the Rent Administrator, and the Rent Administrator issues an order either granting or denying the hardship petition. *See* 14 DCMR § 4209.20(f). Even then, tenants must file exceptions and objections, wait for a hearing to be held, and wait further for a decision on the exceptions and objections to be issued. *See id.* Meanwhile, if the entire decision process by the Rent Administrator takes longer than 90 days, tenants are required to pay a possibly significant provisional rent increase throughout the proceedings, which provisional increase by definition may not be ultimately approved. *See* D.C. OFFICIAL CODE § 42-3502.12(c).

As the hardship petition process is described above, the Commission is unable to understand how such process serves the remedial purposes of the Act, particularly the goal of protecting "low- and moderate-income tenants from the erosion of their income from increased housing costs." D.C. OFFICIAL CODE § 42-3501.02(1). Nevertheless, the Commission recognizes that its delegated authority under the Act is solely to interpret and enforce its provisions. *See* D.C. OFFICIAL CODE § 42-3502(a)(1)-(3). If deemed necessary, only the D.C. City Council is authorized to amend any provisions of the Act to further ensure the consistency of its hardship petition provisions with the purposes of the Act – to preserve affordable housing, assist lower income residents to attain affordable housing, and to provide housing providers a reasonable return on investment. *See* D.C. OFFICIAL CODE § 1-204.04(a). *See also, e.g.,* Kim v. Tenants of 408 Independence Ave., S.E., CI 20,320 (RHC Oct. 20, 1988) (stating that the Commission is powerless to amend the Act); Orfila v. Tenants of 1831 Belmont Rd., N.W., HP 20,027 (RHC Feb. 20, 1987) (explaining that the Commission is "without power to administratively amend the Act").

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to DC OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission . . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO DISMISS** in HP 20,812 was mailed, postage prepaid, by first class U.S. mail on this **11th day** of **June, 2014** to:

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

Ernestine Tyus
1728 Gales Street, NE
Washington, DC 20002

Tillman M. Peck, President
4021 9th Street, NW, Apt. 107
Washington, DC 20011

Mr. & Mrs. Phillip Adeyemi
4021 9th Street, NW, Apt. 402
Washington, DC 20011

Ms. Maria Merino
4021 9th Street, NW, Apt. 403
Washington, DC 20011

Kevin Johnson
4021 9th Street, NW, Apt. 404
Washington, DC 20011

Ms. Christia Lazo
4021 9th Street, NW, Apt. 405
Washington, DC 20011

Carol Gentle
4021 9th Street, NW, Apt. 406
Washington, DC 20011

Ms. Tammy Carlton
4021 9th Street, NW, Apt. 306
Washington, DC 20011

Ms. Sykes
4021 9th Street, NW, Apt. 308
Washington, DC 20011

Ms. Teresa Benitez
4021 9th Street, NW, Apt. 401
Washington, DC 20011

Arthur Rice & Rosse Mwangl
4021 9th Street, NW, Apt. 208
Washington, DC 20011

Mr. & Mrs. Robert Anderson
4021 9th Street, NW, Apt. 301
Washington, DC 20011

Mr. & Mrs. Montiel
4021 9th Street, NW, Apt. 303
Washington, DC 20011

Janice Palmer
4021 9th Street, NW, Apt. 103
Washington, DC 20011

A. Brandon Cook
4021 9th Street, NW, Apt. 202
Washington, DC 20011

Mr. John Cluverius
4021 9th Street, NW, Apt. 204
Washington, DC 20011

Tamika Smith & Mark Shelton
4021 9th Street, NW, Apt. 304
Washington, DC 20011

Winefield & Suzanne Schinael
4021 9th Street, NW, Apt. 305
Washington, DC 20011

Ms. Candida Caulfield
4021 9th Street, NW, Apt. 307
Washington, DC 20011

Conception Franko & Oscar Landeverde
4021 9th Street, NW, Apt. 309
Washington, DC 20011

Ms. Margaret Boyd
4021 9th Street, NW, Apt. 207
Washington, DC 20011

Angel Melendez
4021 9th Street, NW, Apt. 209
Washington, DC 20011

Teresa Channey
4021 9th Street, NW, Apt. 302
Washington, DC 20011

Sharon Boatwright
4021 9th Street, NW, Apt. 102
Washington, DC 20011

LaSharon Ellis
4021 9th Street, NW, Apt. 104
Washington, DC 20011

Ms. Abena Seeney
4021 9th Street, NW, Apt. 202
Washington, DC 20011

Mr. Lymen Mendez
4021 9th Street, NW, Apt. 205
Washington, DC 20011

Ms. Debra Bright
4021 9th Street, NW, Apt. 206
Washington, DC 20011

Lois Adams
4021 9th Street, NW, Apt. 105
Washington, DC 20011

Lynette Herndon
4021 9th Street, NW, Apt. 106
Washington, DC 20011

Joseph Roger
4021 9th Street, NW, Apt. 108
Washington, DC 20011

Ms. J.C. Morales
4021 9th Street, NW, Apt. 109
Washington, DC 20011

Mr. Naghshi
4021 9th Street, NW, Apt. 201
Washington, DC 20011

Mr. Derrick Lewis
4021 9th Street, NW, Apt. B1
Washington, DC 20011

Mr. Elias Hernandez
4021 9th Street, NW, Apt. B2
Washington, DC 20011

Ms. Edwina C. Goard
4021 9th Street, NW, Apt. B3
Washington, DC 20011

Maritza Navarro
4021 9th Street, NW, Apt. B5
Washington, DC 20011

Albert Piper
4021 9th Street, NW, Apt. B4
Washington, DC 20011

Wilma Davis
4021 9th Street, NW, Apt. 101
Washington, DC 20011

Kesha Wynn
4021 9th Street, NW, Apt. 407
Washington, DC 20011

Mr. Matthews Brown
4021 9th Street, NW, Apt. 408
Washington, DC 20011

Mr. & Mrs. Konadia Pascal
4021 9th Street, NW, Apt. 409
Washington, DC 20011

Mr. Noe Martinez
4021 9th Street, NW, Apt. 501
Washington, DC 20011

Ms. Sherin Brown
4021 9th Street, NW, Apt. 502
Washington, DC 20011

Solange M. Mukendi
4021 9th Street, NW, Apt. 503
Washington, DC 20011

Mr. Roberto Jimenez
4021 9th Street, NW, Apt. 505
Washington, DC 20011

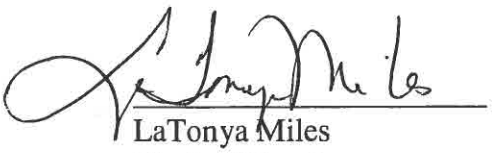
Pierre & Rose McKinley
4021 9th Street, NW, Apt. 504
Washington, DC 20011

Ms. Esther Brown
4021 9th Street, NW, Apt. 506
Washington, DC 20011

Ruth Castel-Branco & Jesse VanTol
4021 9th Street, NW, Apt. 507
Washington, DC 20011

Serrigo Ferrinto
4021 9th Street, NW, Apt. 508
Washington, DC 20011

Ms. Tracey Coleman
4021 9th Street, NW, Apt. 509
Washington, DC 20011



LaTonya Miles
Clerk of Court
(202) 442-8949