

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

NV 09-001

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

Ward Three (3)

**TENANTS OF 3133 CONNECTICUT AVENUE, N.W.**

Tenants/Appellants

v.

**KLINGLE CORPORATION**

Housing Provider/Appellee

**ORDER ON RECONSIDERATION**

October 16, 2015

**SZEGEDY-MASZAK, CHAIRMAN.** This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by Acting Rent Administrator Keith Anderson (Acting Rent Administrator), based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).<sup>1</sup> 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.

---

<sup>1</sup> OAH assumed jurisdiction over petitions arising under the Act from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to 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 RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

## I. PROCEDURAL HISTORY<sup>2</sup>

Housing Provider/Appellee Klingle Corporation (Housing Provider), filed an “Application for Approval of Issuance of Notice to Vacate Pursuant to D.C. Code § 42-3505.01(f) (501(f) Application) with RAD on July 31, 2009, with respect to the housing accommodation located at 3133 Connecticut Avenue, N.W. (Housing Accommodation). The Acting Rent Administrator issued a final order on March 3, 2010: Klingle Corporation v. Tenants of 3133 Connecticut [Ave.] NW, NV 09-001 (RAD Mar. 3, 2010) (Final Order). The Acting Rent Administrator approved the 501(f) Application, authorizing the Housing Provider to recover possession of each rental unit in the Housing Accommodation for the purpose of making alterations and renovations that “cannot be safely or reasonably . . . accomplished while the rental unit is occupied.” Final Order at 10-11; Record for NV 09-001 (R.) at 688-89 (citing D.C. OFFICIAL CODE § 42-3505.01(f)(1)(A) (2001)).

Several notices of appeal were filed with the Commission, including, relevant to the purposes of this Order on Reconsideration, a March 22, 2010, Notice of Appeal by, *inter alia*, Donald Wassem (Unit 506), Christine Burkhardt (Unit 901), and Blake and Wendy Nelson (Unit 802); an April 19, 2010 Notice of Appeal by Blake Nelson (Unit 802); and an April 20, 2010, Notice of Appeal by, *inter alia*, Christine Burkhardt (Unit 901), and Donald Wassem (Unit 506). *See* Decision and Order at 13.

A brief was submitted jointly by Christine Burkhardt and Donald Wassem on June 17, 2013; the Housing Provider filed a brief on June 28, 2013; no brief was filed by Blake and Wendy Nelson. The Commission held a hearing in this case on July 2, 2013. Only one tenant,

---

<sup>2</sup> A complete procedural history of this case is set forth in the Commission’s September 1, 2015 Decision and Order in this case. *See* Tenants of 3133 Connecticut Ave., NW v. Klingle Corp., NV 09-001 (RHC Sept. 1, 2015) (Decision and Order). The Commission sets forth herein only those facts relevant to the Motion for Reconsideration.

Christine Burkhardt, appeared at the Commission's hearing. The Commission issued its Decision and Order on September 1, 2015, affirming the Final Order in its entirety.

On September 21, 2015, Blake and Wendy Nelson, Donald Wassem, and Christine Burkhardt filed a Motion for Reconsideration, requesting that the Commission reconsider its dismissal of Blake and Wendy Nelson as parties to the appeal. Motion for Reconsideration at 1. On September 25, 2015, the Commission entered an Order enlarging the time period for disposition of the Motion for Reconsideration until October 16, 2015. No opposition to the Motion for Reconsideration was filed by the Housing Provider.

## II. THE MOTION FOR RECONSIDERATION

The Motion for Reconsideration asserts that the Nelsons acted in good faith with respect to the scheduled Commission hearing, by seeking a continuance, filing a notice to stand on their pleadings, and informing the Commission that Ms. Burkhardt would be present at the oral argument. Motion for Reconsideration at 1.<sup>3</sup> The Motion for Reconsideration also contends that dismissal of a party is an "extreme sanction" that should be imposed only in "extreme and egregious circumstances," and only where bad faith is present. *Id.* at 3-5.

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* Douglas v. Dorchester House Assocs., RH-SF-09-20,098 (RHC July 10, 2015); 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).

---

<sup>3</sup> 14 DCMR § 3823.2 (2004) provides as follows: "The motion for reconsideration or modification shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful."

As the Commission explained in its Decision and Order, the Commission has consistently held that failure to appear at the Commission’s scheduled hearing is grounds for dismissal of an appeal. Stancil v. D.C. Rental Hous. Comm’n, 806 A.2d 622, 622-25 (D.C. 2002); *see also* Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014) (dismissing tenant’s cross-appeal where tenant failed to appear at the Commission’s hearing); Carter v. Paget, RH-TP-09-29,517 (RHC Dec. 11, 2013) (dismissing appeal where appellant failed to appear at the Commission’s hearing); Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (RHC May 24, 2013) (dismissing the tenant’s notice of appeal where she failed to appear at the Commission’s hearing). Neither the District of Columbia Court of Appeals (DCCA) in Stancil, nor the Commission, has imposed a “good faith” (or “bad faith”) standard when considering the dismissal of an appeal for failure to attend an appellate hearing. Stancil, 806 A.2d at 622-26; *see also* Hardy, RH-TP-09-29,503; Carter, RH-TP-09-29,517; Wilson, RH-TP-11-30,087. As the DCCA specifically determined in Stancil, 806 A.2d at 625-26, the Commission has “broad discretion” in determining any sanctions for a litigant’s failure to appear at a Commission hearing. *See, e.g.*, Hardy, RH-TP-09-29,503; Carter, RH-TP-09-29,517; Wilson, RH-TP-11-30,087.

First, as the Commission noted in its Decision and Order, the Nelsons filed a last-minute, written Notice of Inability to Attend Oral Argument (Notice of Inability to Attend Oral Argument) on July 2, 2013—the same day as the scheduled hearing—informing the Commission that they would not be able to attend the hearing. However, the Nelsons never filed a motion or other request seeking the Commission’s approval to be absent from the hearing in order to avoid dismissal of their appeal.<sup>4</sup> *See* 14 DCMR § 3814.1 (“[a]n application for an order or other relief

---

<sup>4</sup> In light of the Commission’s experience with Mr. Nelson with respect to other cases related to the Housing Accommodation filed under the Act, the Commission observes that Mr. Nelson is a highly experienced litigator, with a demonstrated familiarity with motions practice.

