

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).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 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 HISTORY²

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,

² 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 1.³ 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).

³ 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.⁴ *See* 14 DCMR § 3814.1 ("[a]n application for an order or other relief

⁴ 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.

shall be made by filing a written motion[.]”); *see also*, 14 DCMR § 3801.6 (“The receipt of a pleading or other document which is not timely or which does not comply with the substantive requirements of this title shall not constitute a waiver of the requirements of this title; and any such pleading or document may be rejected by the Commission.”) Furthermore, the Nelsons’ Motion for Continuance had been denied by the Commission on June 28, 2013 for its failure to meet the requirements of 14 DCMR § 3815.2-.3. Klingling Corp. v. Tenants of 3133 Connecticut Ave., NW, NV 09-001 (RHC June 28, 2013) (Order on Motion for Consolidation of Appeal Issues with Tenant Petition 28,724 or, in the Alternative, Motion for Extension of Time to File Initial Brief and Continuance for Oral Argument).⁵

Second, the Commission’s review of the recording of the Commission hearing does not indicate that Ms. Burkhardt requested that the Commission permit her to represent the Nelsons at the hearing. Hearing CD (RHC July 2, 2013); *see* 14 DCMR § 3812.6 (“Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual’s name, local address, telephone number . . . and for whom the appearance is made.”). The Commission’s review of the record also does not indicate that the Nelsons otherwise sought the Commission’s approval that Ms. Burkhardt serve as the Nelsons’ representative at the Commission hearing.

Third, although the Nelsons aver that they wished to “stand on their pleadings,” the Commission notes that the Nelsons did not file a brief or any other similar document providing legal and other support for their claims on appeal. The only document filed by the Nelsons that the Commission, in its discretion, may only arguably deem to be in lieu of a brief or similar

⁵ *See infra* at n.6.

supporting document is the Appendix A to their Motion for Consolidation.⁶ Appendix A is a six page document simply indicating the places in the record where the Nelsons initially identified issues before the Acting Rent Administrator that are currently on appeal. *See* Motion for Consolidation, Appendix A (RHC June 17, 2013). In Appendix A, the Nelsons failed to provide any legal arguments or evidentiary support to the Commission regarding the merits of their claims pursuant to the Act or applicable case law. *Id.*

Finally, the Commission notes the stark contrast with respect to compliance with Commission regulations related to the prosecution of an appeal between the actions of the Nelsons and Mr. Wassem. *See* 14 DCMR §§ 3812.6 & 3814.1. The record indicates that the Nelsons merely provided last-minute notice to the Commission that they were unable to attend the hearing without requesting relief (e.g., representation by Ms. Burkhardt). In his considered actions, Mr. Wassem filed a motion more than two weeks prior to the Commission's hearing requesting permission from the Commission either to participate in the hearing, to rely on his written brief, or to be deemed present at the hearing through the appearance of Ms. Burkhardt at the hearing.⁷ *Compare* Notice of Inability to Attend Oral Argument, *with* Request to Participate by Telephone.

In sum, the record before the Commission indicates that the Nelsons had ample opportunities to preserve their standing in this case. *See supra* at 4-5. The Nelsons failed to file appropriate requests to the Commission for relief to remedy their apparent inability to attend the

⁶ The full title of the Motion for Consolidation, filed on June 17, 2013, was "Motion for Consolidation of Appeal Issues with Tenant Petition 28,724 or, in the Alternative, Motion for Extension of Time to File Initial Brief and Continuance for Oral Argument."

⁷ Mr. Wassem's Request to Appear by Telephone was granted in part, and denied in part, on June 28, 2013. Klingling Corp. v. Tenants of 3133/3131 Connecticut Ave., N.W., NV 09-001 (RHC June 28, 2013). The Commission denied Mr. Wassem's request to appear at the Commission's hearing by telephone, but granted his request to be represented at the hearing by Ms. Burkhardt. *Id.*

Commission hearing, *see* 24 DCMR § 3814.1; failed to advise the Commission that Ms. Burkhardt was authorized to act as their representative at the hearing, *see* 14 DCMR § 3812.6; and failed to provide the Commission with a brief or similar supporting document that presented the legal and evidentiary support for their issues on appeal. The Commission observes that the actions of Mr. Wassem requesting the Commission's approval of his standing on appeal stand in stark contrast to the Nelson's notice simply stating and declaring the apparent obstacles to preserve their standing on appeal without requesting relief from the Commission. *Compare* Notice of Inability to Attend Oral Argument, *with* Request to Participate by Telephone.

Based on the foregoing, and in the exercise of its reasonable discretion, the Commission is not persuaded by the Motion for Reconsideration that the Decision and Order was erroneous or unlawful. 14 DCMR § 3823.2; Prime, 955 A.2d at 182; *see also* Douglas, RH-SF-09-20,098; Morris, RH-TP-06-28,794; Richardson, RH-TP-12-30,230.

III. CONCLUSION

For the foregoing reasons, the Commission denies the Motion for Reconsideration.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN


RONALD A. YOUNG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER ON RECONSIDERATION** in NV 09-001 was served by first-class mail, postage prepaid, this **16th day of October, 2015**, to:

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