

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-RP-15-00017

*In re:* 1829 Kalorama Rd., N.W.

Ward One (1)

**1829 KALORAMA ROAD TENANT ASSOCIATION, INC.**  
Tenant/Appellant

v.

**ESTATE OF WILLIAM P. FLETCHER**  
Housing Provider/Appellee

**ORDER DISMISSING APPEAL**

July 5, 2016

**SZEGEDY-MASZAK, CHAIRMAN.** This matter is before the Rental Housing Commission (“Commission”) as an appeal of a final order issued by the Office of Administrative Hearings (“OAH”), based on a petition filed in the Rental Conversion and Sale Division (“RCSD”) of the Department of Housing and Community Development (“DHCD”). For the reasons stated herein, the Commission, *sua sponte*, dismisses this appeal for lack of jurisdiction.

**I. PROCEDURAL HISTORY**

On June 23, 2016, appellant 1829 Kalorama Road Tenant Association, Inc. (“Association”) filed a notice of appeal (“Notice of Appeal”) with the Commission. The Notice of Appeal asserts several errors in a final order issued by Administrative Law Judge Vytas Vergeer (“ALJ”): 1829 Kalorama Rd. Tenant Ass’n v. Estate of William P. Fletcher, 2015-DHCD-RP-00017 (OAH June 9, 2016) (“Final Order”).<sup>1</sup>

The Commission recites the relevant procedural history from the Final Order:

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<sup>1</sup> Although the certified record of this proceeding has not yet been transmitted to the Commission by the OAH, the Commission did receive a copy of the Final Order by inter-agency mail when it was issued.

On April 21, 2014, the Estate of William P. Fletcher (Housing Provider), served the Department of Housing and Community Development (DHCD) with an offer of sale and tenant opportunity to purchase with a third party contract for 1829 Kalorama Road, NW, Washington, DC (the Property).

In response, the tenants formed the 1829 Kalorama Road Tenant Association, Inc. and filed a Tenant Organization Registration Application with DHCD on May 20, 2014.

The Housing Provider challenged that application on June 12, 2014, alleging that the Association lacked sufficient membership to be registered as the tenants' sole representative pursuant to DC Official Code § 42-3404.11(1).

On August 20, 2014, DHCD rejected the Association's Registration Application.

On September 9, 2014, the Association filed a Petition for Reconsideration that the Housing Provider opposed.

On January 16, 2015, DHCD issued its Order Finding Reasonable Grounds to Convene Hearing and forwarded the case to the Office of Administrative Hearings (OAH).

Final Order at 2 (paragraph breaks added).

In the Final Order, the ALJ affirmed DHCD's denial of the Association's registration application, making the following conclusions of law:

The property at issue consists of more than four rental units, two of which were occupied when the tenant association was purportedly formed. Thus, in order to be valid, any tenant association had to include two members. But neither Mr. Ahadi nor Ms. Sheehy were ever valid members of a tenant association for [Tenant Opportunity to Purchase Act] purposes. Mr. Ahadi was an employee of the owner of the property in the 120 days preceding the alleged formation of the association, and Ms. Sheehy never joined the association. Even if Ms. Sheehy did briefly join the association, she rescinded her alleged membership by email to Mr. Ahadi on May 21, 2014, and by her affidavit of June 6, 2014. There is thus no valid member of a tenant association to purchase the property as of May 21, 2014.

Final Order at 37.

However, the Final Order states, under the heading "Jurisdiction" that:

This matter is governed by the Rental Housing Act of 1985 (D.C. Official Code § 42-3501.01 *et seq.*), Chapters 38-43 of [Title] 14 District of Columbia Municipal Regulations ("DCMR"), the District of Columbia Administrative

Procedures Act (D.C. Official Code § 2-501 *et seq.*) (“DCAPA”), and OAH Rules (1 DCMR 2800 *et seq.* and 1 DCMR 2920 *et seq.*).

Final Order at 4. Additionally, the Final Order contains the standard notice of appeal rights that is found in all OAH orders in rental housing cases, informing the parties that, “[p]ursuant to D.C. Official Code §§ 2-1831.16(b) and 42-3502.16(h), any party aggrieved by a final order . . . may appeal the final order to the District of Columbia Rental Housing Commission[.]” Final Order at 42.

On June 29, 2016, the personal representative of the Estate of William P. Fletcher (“Housing Provider”) filed a “Response of Appellee to Notice of Appeal” (“Response”).

## **II. JURISDICTION**

Neither the Notice of Appeal nor the Response raise the issue of the Commission’s jurisdiction over this case. Nonetheless, an appellate body has discretion to raise the issue of jurisdiction *sua sponte*. See Brandywine Ltd. P’ship v. D.C. Rental Hous. Comm’n, 631 A.2d 415, 416-17 (D.C. 1991); Vista Edgewood Terrace v. Rascoe, TP 24,858 (RHC Oct. 13, 2000); *see also* Sindram v. Tenacity Grp., RH-TP-07-29,094 (RHC Sept. 14, 2011) (dismissing appeal for lack of jurisdiction where parties did not have landlord-tenant relationship).

The Association’s claims arise under D.C. OFFICIAL CODE § 42-3404.11, which is a provision of the Tenant Opportunity to Purchase Act of 1980, D.C. Law 3-86; D.C. OFFICIAL CODE §§ 42-3404.01 *et seq.* (2012 Repl.) (“TOPA”), which is in turn a title of the Rental Housing Conversion and Sale Act of 1980, D.C. Law 3-86, D.C. OFFICIAL CODE §§ 42-3401.01 *et seq.* (2012 Repl.) (“Conversion and Sale Act”). The Commission, however, is established by the Rental Housing Act of 1985, D.C. Law 6-10; D.C. OFFICIAL CODE § 42-3501.01 *et seq.* (2012 Repl.) (“Rental Housing Act”), and not TOPA or the Conversion and Sale Act. *Compare*

D.C. OFFICIAL CODE § 42-3502.01 *with* D.C. OFFICIAL CODE §§ 42-3404.01 *et seq.* and D.C. OFFICIAL CODE §§ 42-3401.01 *et seq.*

It is well-established that “[a]n administrative agency is a creature of statute and may not act in excess of its statutory authority.” District Intown Props. v. D.C. Dep’t of Consumer & Regulatory Affairs, 680 A.2d 1373, 1379 (D.C. 1996); *see* Spring Valley Heights Citizens Ass’n v. D.C. Bd. of Zoning Adjustment, 644 A.2d 434, 436 (D.C. 1994) (court is “reluctant to read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created”) (quoting Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm’n of D.C., 378 A.2d 1085, 1089 (D.C. 1977)). Furthermore, “[a]bsent express statutory or regulatory authority, a regulatory agency may not impose remedial measures.” Davidson v. D.C. Bd. of Medicine, 562 A.2d 109, 112 (D.C. 1989).

The Rental Housing Act enumerates the “powers and duties” of the Commission, which include, in relevant part, the duty to:

Decide appeals brought to it from decisions of the Rent Administrator, including appeals under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980.

D.C. OFFICIAL CODE § 42-3502.02(a)(2) (emphasis added). Under D.C. OFFICIAL CODE § 42-3502.04, the Rent Administrator, from whom appeals may be taken to the Commission, has jurisdiction over “those complaints and petitions arising under [titles] II, IV, V, VI, and IX of [the Rental Housing Act] and title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.”

The Rent Administrator’s jurisdiction over those administrative complaints and petitions enumerated *supra* has been transferred to OAH. *See* D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2013 Supp.) (“[t]his chapter shall apply to adjudicated cases under the jurisdiction of the Rent

Administrator”).<sup>2</sup> The OAH Establishment Act, however, specifically provides that “[t]he Rental Housing Commission shall have jurisdiction to review orders of [OAH] in all adjudicated cases brought pursuant to Chapter 35 of Title 42 [of the D.C. OFFICIAL CODE],” *i.e.*, the Rental Housing Act, but not TOPA or the Conversion and Sale Act. D.C. OFFICIAL CODE § 2-1831.16(b).

Although the Conversion and Sale Act and the Rental Housing Act both relate to rental housing and the rights of tenants, the Commission has specifically stated that it “only retains jurisdiction to address contested issues under TOPA” when:

- (1) “[T]he statutory provision at issue under TOPA makes a direct, specific cross-reference to the Act,” Salazar v. Varner, RH-TP-09-29,645 (RHC June 16, 2015) n.6; and
- (2) The TOPA provision involves the “same kinds of issues that are routinely considered by the Rent Administrator in determining [regulated rents] under the [Act,]” Sendar v. Burke, HP 20,213 & TP 20,772 (RHC Apr. 6, 1988).

*See also* Bower v. Chastleton Assocs., TP 27,838 (RHC Mar. 27, 2014); Taylor v. Bain, TP 28,071 (RHC June 28, 2005); Segal v. Snider Bros. Prop. Mgmt., Inc., TP 20,335 (RHC Mar. 11, 1988) (noting that authority to conduct administrative hearings for certain violations of Conversion and Sale Act and TOPA had not been delegated to the Rent Administrator). In Salazar, RH-TP-09-29,645, for example, the Commission determined that it had jurisdiction because the provision at issue in the Conversion and Sale Act provided the following:

**Rent level** — Any owner of a converted unit shall not charge an elderly or disabled tenant rent in excess of the lawful rent at the time of request for a tenant

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<sup>2</sup> The Notice of Appeal asserts that OAH was “acting in place of the Rent Administrator, through delegated authority per [14 DCMR § 3900.3.]” Notice of Appeal at 2. This assertion is plainly incorrect as OAH derives its authority by statute, and delegations of authority to hearing examiners pursuant to 14 DCMR § 3900.3 have been superseded by that statute. Moreover, as discussion *infra* at 3, authority over TOPA matters is not delegated to the Rent Administrator.

election for purposes of conversion plus annual increases on that basis authorized under the Rental Housing Act.

D.C. OFFICIAL CODE § 42-3402.08(b) (emphasis added). In short, unlike the provisions of the Conversion and Sale Act in this case, the applicable provision of the Conversion and Sale Act made specific reference to the Rental Housing Act. *See Salazar*, RH-TP-09-29,645.

Moreover, the Conversion and Sale Act itself provides that administrative hearings may be conducted when, as occurred in this case, DHCD “determines to reject an application by a party pursuant this [act.]” D.C. OFFICIAL CODE § 42-3405.04; *see* Final Order at 2 (application by Association rejected by DHCD). Most importantly for purposes of this determination by the Commission, the only appellate review provided for in the Conversion and Sale Act after such an OAH hearing as occurred here is by filing a petition for review in the District of Columbia Court of Appeals (“DCCA”). D.C. OFFICIAL CODE § 42-3405.09.

With regard to the Association’s claims in this case, nothing in D.C. OFFICIAL CODE § 42-3404.11 specifically references the Rental Housing Act, or relates to the regulation of rents or other matters routinely considered by the Rent Administrator. *See* D.C. OFFICIAL CODE § 42-3502.04a (establishing Rental Conversion and Sale Administrator as head of the RCSD within DHCD).<sup>3</sup> To the contrary, D.C. Official Code § 42-3404.11 establishes procedures for tenant organizations to exercise their right of first refusal to purchase a housing accommodation. *See* D.C. OFFICIAL CODE § 42-3404.11 (emphasis added).

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<sup>3</sup> Pursuant to Mayor’s Order 84-8, dated January 12, 1984, the statutory authority vested in the Mayor under, in relevant part, titles IV (TOPA) and V (“Implementation and Enforcement”) of the Conversion and Sale Act is delegated to the Director of the Department of Consumer and Regulatory Affairs (“DCRA”). The functions and duties of the Rental Accommodations and Conversion Division of DCRA were subsequently transferred to DHCD the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.). It appears to the Commission that OAH has jurisdiction over TOPA hearings because, as of October 1, 2004, it took jurisdiction over adjudicated cases previously heard by DCRA, *except* for those cases under the jurisdiction of the Rent Administrator. D.C. OFFICIAL CODE § 2-1831.03(b)(2). Therefore, the Commission is satisfied that TOPA issues or Conversion and Sale hearings are not matters “routinely considered by the Rent Administrator.” *See Sendar*, HP 20,213 & TP 20,772; *Segal*, TP 20,335.

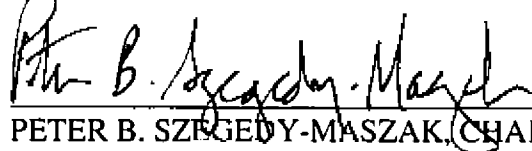
The Association asserts in the Notice of Appeal that the Final Order is erroneous in its interpretation and application of D.C. OFFICIAL CODE § 42-3401.03(18), the definition of a “tenant organization” that may exercise TOPA rights, and its exclusion of “those households in which any member has been an employee of the owner during the preceding 120 days.” Notice of Appeal at 2. The Commission is satisfied that the Rental Housing Act contains no provision addressing the definition of a “tenant organization” that may exercise TOPA rights or any employee exclusion in D.C. OFFICIAL CODE § 42-3401.03(18), nor does that definition reference the Rental Housing Act.

For the reasons stated here, the Commission is satisfied that no provision of the Conversion and Sale Act at issue in this case makes a direct, specific reference to the Rental Housing Act, and that this matter was consequently within the jurisdiction of the Rental Conversion and Sale Administrator, not the Rent Administrator. *See Salazar*, RH-TP-09-29,645; *Chastleton*, TP 27,838. As required by the Conversion and Sale Act, an appeal of an OAH order arising under the Conversion and Sale Act and within the jurisdiction of the Rental Conversion and Sale Administrator must be appealed directly to the DCCA. D.C. OFFICIAL CODE § 42-3405.09. Therefore, the Commission determines that the DCCA, and not the Commission, is the appropriate venue with jurisdiction over an appeal from the Final Order. *See District Intown Props.*, 680 A.2d at 1379; *Spring Valley Heights*, 644 A.2d at 436; *Davidson*, 562 A.2d at 112.

### **III. CONCLUSION**

- For the reasons stated above, the Commission dismisses the Notice of Appeal for lack of jurisdiction.

#### **SO ORDERED**

  
PETER B. SZEGEDY-MASZAK, CHAIRMAN

### **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 D.C. 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  
Historic Courthouse  
430 E Street, N.W.  
Washington, DC 20001  
(202) 879-2700

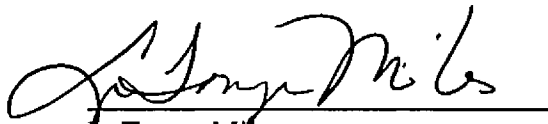
### **CERTIFICATE OF SERVICE**

I certify that a copy of the **ORDER DISMISSING APPEALS** in RH-TP-12-30,182 was served by first-class mail, postage prepaid, this \_\_\_\_ day of July, 2016, to:



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A handwritten signature in black ink, appearing to read "LaTonya Miles", written over a horizontal line.

LaTonya Miles  
Clerk of Court  
(202) 442-8949