

**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 DENYING RECONSIDERATION**

July 28, 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”). The Commission determined, in an order dated July 5, 2016, that it lacks jurisdiction over this matter. 1829 Kalorama Rd. Tenant Ass’n, Inc. v. Estate of William P. Fletcher, RH-RP-15-00017 (RHC July 5, 2016) (“Dismissal Order”). For the reasons set forth herein, the Commission denies reconsideration of the Dismissal Order.

**I. PROCEDURAL HISTORY**

The full procedural history of this matter, as relevant to the Commission’s jurisdiction, is set forth in the Dismissal Order. *See* Dismissal Order at 1-3. In short, 1829 Kalorama Road Tenant Association, Inc. (“Association”) sought recognition from the RCSD to exercise its rights under 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”), before the Estate of William P. Fletcher

("Housing Provider") sold the housing accommodation at which the Association's members reside. The RCSD denied the request for recognition and, after a hearing, OAH Administrative Law Judge Vytas Vergeer ("ALJ") affirmed the denial. See 1829 Kalorama Rd. Tenant Ass'n v. Estate of William P. Fletcher, 2015-DHCD-RP-00017 (OAH June 9, 2016) ("Final Order").

On June 23, 2016, the Association filed a notice of appeal from the Final Order with the Commission ("Notice of Appeal"). On July 5, 2016, the Commission determined, *sua sponte*, in the Dismissal Order, that this matter is governed entirely by TOPA and 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's jurisdiction, however, only reaches matters governed 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"). See Dismissal Order at 3-6.

On July 19, 2016, the Association filed the instant motion for reconsideration of the Dismissal Order ("Motion for Reconsideration"). On July 22, 2016, the Housing Provider filed an Opposition of Appellee to Motion for Reconsideration ("Opposition").<sup>1</sup>

## II. DISCUSSION

The Motion for Reconsideration asserts that the Dismissal Order is erroneous for three reasons.

First, the Association claims that, because "the matter of governing law was not an error contested in the Notice of Appeal, it is clear from the Final Order's own statement of [j]urisdiction that the case falls under the [Commission's] scope of review." Motion for

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<sup>1</sup> The Housing Provider objects to the Association's inclusion of Baktash Ahadi in the caption of the Motion for Reconsideration because he has never been a party to this case. Opposition at 1. The Commission observes that the propriety of Mr. Ahadi's membership in the Association is an issue raised in the Notice of Appeal. See Notice of Appeal at 4-5. Because that issue arises under TOPA, over which the Commission does not have jurisdiction, and because the Motion for Reconsideration also includes the Association in its caption and its request for relief, the Commission is satisfied that it does not need to address the issue of Mr. Ahadi's inclusion in the caption.

Reconsideration at 4. As the District of Columbia Court of Appeals (“DCCA”) has repeatedly stated, “[w]here a substantial question exists as to . . . subject matter jurisdiction, it is our obligation to raise it, *sua sponte*, even though, as here, no party has asked us to consider it.” Mathis v. D.C. Hous. Auth., 124 A.3d 1089, 1101 n.21 (D.C. 2015); Neill v. D.C. Pub. Emp. Relations Bd., 93 A.3d 229, 237 n.35 (D.C. 2014); In re D.M., 771 A.2d 360, 364 (D.C. 2001); Murphy v. McCloud, 650 A.3d 202, 203 n.4 (D.C. 1994); *see also* Tenants of 1255 N.H. Ave., N.W. v. D.C. Rental Hous. Comm’n, 647 A.2d 70, 75 n.5 (D.C. 1994) (“[I]f a court is without subject matter jurisdiction over the controversy . . . , it should so hold and dismiss the proceeding, without attempting to resolve the substantive questions presented.”). Therefore, the Commission is satisfied that it was appropriate to act *sua sponte* to address its jurisdiction over this matter.<sup>2</sup>

Second, the Association asserts that the Commission erred because “[t]he Final Order’s [statement of] [a]ppeals rights make[s] no mention of the purported lack of [j]urisdiction alleged in the [Dismissal Order], and thus a reasonable party acting in good faith would have no reason to believe that the [Commission] would refuse [its] appellate review function in this case.” Motion for Reconsideration at 5. The Commission’s jurisdiction is established by statute; an erroneous statement of governing law or appellate rights cannot confer jurisdiction on an administrative agency where none exists by law. *See* District Intown Props. v. D.C. Dep’t of Consumer & Regulatory Affairs, 680 A.2d 1373, 1379 (D.C. 1996) (“An administrative agency is a creature of statute and may not act in excess of its statutory authority.”); Levy v. D.C. Bd. of

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<sup>2</sup> The Association further asserts the Commission “failed to address the implications this has on the correct venue for appeal.” Motion for Reconsideration at 4. The Commission is not persuaded that this constitutes legal error or accurately reflects the Dismissal Order. The Commission did observe in the Dismissal Order that “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[.]” Dismissal Order at 6 (citing D.C. OFFICIAL CODE § 42-3405.09).

Zoning Adjustment, 570 A.2d 739, 751 (D.C. 1990) (“[w]e are not required to defer to an agency’s interpretation of its authority if that view is plainly wrong”). Although the Final Order states that the “matter is governed by the Rental Housing Act[,]” Final Order at 4, the Commission observes that none of the legal analysis in the Final Order applies any provision of the Rental Housing Act, nor does the Association cite any provision of the Rental Housing Act in its Notice of Appeal. *See generally* Final Order; Notice of Appeal.<sup>3</sup> Therefore, the Commission is satisfied that it did not err in dismissing the appeal on these grounds.

With regard to the Association’s assertion that it relied in good faith on the Final Order’s statement of appellate rights, the Commission observes that the “principles of estoppel do not apply” to subject-matter jurisdiction. Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 465 U.S. 694, 702 (1982).<sup>4</sup> Nonetheless, in light of both the Commission’s comity with OAH regarding the efficient adjudication of cases arising under the Rental Housing Act and the Commission’s determination of plain error in the Final Order, the Commission is persuaded that this case should be remanded to OAH for the issuance of a new order that correctly identifies the governing law and appeal rights of the parties. *See* D.C. OFFICIAL CODE §§ 42-3405.09, 42-3502.02; Dismissal Order at 4-6.

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<sup>3</sup> The Commission reiterates, for clarity, that the Conversion and Sale Act is codified in Title 42, Chapter 34 of the D.C. OFFICIAL CODE, *i.e.*, D.C. OFFICIAL CODE § 42-3401.01 *et seq.*, whereas the Rental Housing Act is codified in Title 42, Chapter 35, *i.e.*, D.C. OFFICIAL CODE § 42-3501.01 *et seq.*

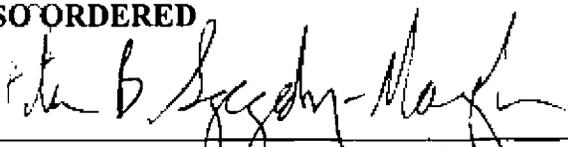
<sup>4</sup> The Commission notes that it has, in some circumstances, applied the doctrine of equitable estoppel because of errors by administrative agencies in giving instructions for appeals arising under the Rental Housing Act. *See, e.g.*, Presley v. Admasu, RH-TP-08-29,147 (RHC June 18, 2015) at n.9 (accepting notice of appeal as timely filed where it was accepted filing by OAH but not received until later by Commission); Envoy Assocs., L.P. v. Word, TPs 12,100 & 12,101 (RHC May 8, 1987) (Order) (accepting notice of appeal as timely filed where “Rent Administrator erroneously identified the time period within which an appeal must be lodged with the Commission”) (citing Town Center Mgmt. v. D.C. Rental Hous. Comm’n, 496 A.2d 264, 266 (D.C. 1985) (“Under some circumstances an agency may be estopped from asserting that an appeal has not been timely filed[.]” (internal quotations omitted))). The Commission is satisfied that those circumstances are distinguishable because, unlike the time to file an appeal, the legal issues in this case do not arise under the Rental Housing Act at all. *See* District Intown Props., 680 A.2d at 1379 (“The purported exercise of jurisdiction beyond that conferred upon the agency by the legislature is *ultra vires* and a nullity.”).

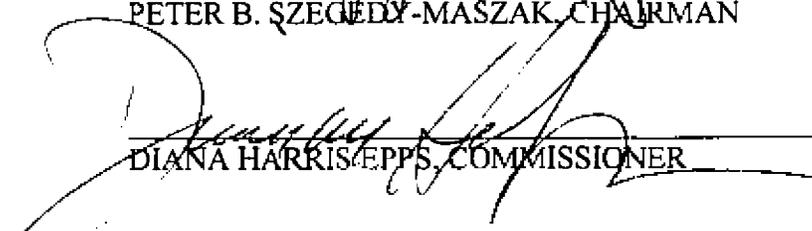
Third, the Association asserts that the Housing Provider's failure to raise the issue of jurisdiction "should constitute either consent to the [Commission's] appellate review, or a waiver of any jurisdiction based objection." Motion for Reconsideration at 5. "A party's conduct, whether by consent or waiver, cannot confer subject-matter jurisdiction upon a court." Bd. of Trs. of Univ. of D.C. v. Joint Review Comm. on Educ. in Radiologic Tech., 114 A.3d 1279, 1284 n.5 (D.C. 2015) (citing Chase v. Public Defender Serv., 956 A.2d 67, 75 (D.C. 2008) ("Parties cannot waive subject matter jurisdiction by their conduct or confer it . . . by consent, and the absence of such jurisdiction can be raised at any time.")); *see also* Smith Prop. Holdings Five (D.C.), L.P. v. D.C. Rental Hous. Comm'n, No. 14-AA-773, 2016 D.C. App. LEXIS 41 at \*7 (D.C. Jan 27, 2016); F.W. Woolworth Co. v. D.C Bd. of Appeals & Review, 579 A.2d 713, 716-17 (D.C. 1990). The Commission is satisfied that any consent or wavier of jurisdiction by the Housing Provider could have no effect on the Commission's jurisdiction, and therefore the Commission did not err in dismissing the appeal on these grounds.

### III. CONCLUSION

For the foregoing reasons, the Commission denies the Motion for Reconsideration. This case is remanded to the OAH with instructions to issue a final order that properly identifies the governing law and the appeal rights of the parties. *See* D.C. OFFICIAL CODE § 42-3405.09.

SO ORDERED

  
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PETER B. SZEGEDY-MASZAK, CHAIRMAN

  
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DIANA HARRIS-EPPS, COMMISSIONER

**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: é

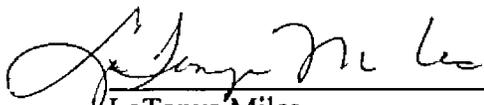
D.C. Court of Appeals  
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Historic Courthouse  
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Washington, DC 20001  
(202) 879-2700

**CERTIFICATE OF SERVICE**

I certify that a copy of the **ORDER DENYING RECONSIDERATION** in RH-RP-15-00017 was served by first-class mail, postage prepaid, this **28th day of July, 2016**, to:

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