

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SF-09-20,098

In re: 2480 16th Street, NW

Ward One (1)

DORCHESTER HOUSE, ASSOCIATES, L.L.C.
Housing Provider/Appellant

v.

TENANTS OF 2480 16TH STREET, NW
Tenants/Appellees

**ORDER ON MOTION TO RECONSIDER DENIAL OF MOTION TO
INTERVENE BY BENOIT BROOKENS**

January 3, 2014

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a Final Order issued by the Office of Administrative Hearings (OAH),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). 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 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 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 (2001 Supp. 2008)).

I. PROCEDURAL HISTORY

On November 15, 2013, Benoit Brookens filed with the Commission a “Motion to Intervene, Class Representative in T/P 3788 Benoit Brookens v. Hagner Management Corp. and Class Counsel in T/P 11,552 Benoit Brookens et al. Bernard Gewirz, et al.” (Motion to Intervene) in the appeal of the Final Order from the Office of Administrative Hearings (OAH) in Dorchester House Associates, LLC v. Tenants of 2480 16th St., NW, RH-SF-09-20,098 (OAH May 23, 2011).²

The relevant procedural history of this case prior to the date of this Order, is set forth in the Commission’s December 11 Order. *See* December 11 Order at 2-5. The December 11 Order denied Mr. Brookens’ Motion to Intervene, because the Commission was not persuaded that he had demonstrated the requisite “substantial interest” for intervention under 14 DCMR § 3810.1 (2004).³ *See id.* at 5-6. Specifically, the Commission set forth the following three (3) reasons that supported its determination that Mr. Brookens lacked the requisite substantial interest in this case: (1) “Mr. Brookens has not established to the satisfaction of the Commission that he retains legal status as a ‘tenant’ under the Act at the Housing Accommodation⁴ sufficient to constitute a ‘substantial interest’ in the outcome of this appeal;” (2) Mr. Brookens did not “demonstrate any recent status as a tenant, [and] he also failed to show any specific legal interests or injuries

² The Motion to Intervene was filed five (5) days before the Commission hearing on the appeal on November 20, 2013. The Housing Provider opposed the Motion to Intervene at the Commission hearing. The Commission denied the Motion to Intervene as a preliminary matter at its hearing. An “Order on Motion to Intervene by Benoit Brookens” was issued on December 11, 2013 (“December 11 Order”), memorializing the Commission’s reasoning underlying its denial of the Motion to Intervene at its November 20, 2013 hearing.

³ The text of 14 DCMR § 3810.1 (2004) is set forth *infra* at p.4 n.8.

⁴ The Housing Accommodation at issue in this case is located at 2480 16th Street, N.W., and shall be referred to herein as the “Housing Accommodation.” *See* December 11 Order at 2.

arising from the outcome of this appeal, equivalent to the status or interests of current tenants at the Housing Accommodation in this appeal;” and (3) “Mr. Brookens has failed to demonstrate and establish his authority under applicable District of Columbia law to act in a representative capacity for ‘all affected tenants’ or a ‘class of affected tenants’ in this appeal on the basis of relevant and legally sufficient evidence, satisfactory in the Commission’s discretion, as required by 14 DCMR § 3812.3 (2004).”⁵ *Id.* at 6-8.

On December 26, 2013, Mr. Brookens filed a “Motion to Reconsider Denial of Motion to Intervene by Benoit Brookens” (“Motion to Reconsider”). *See* Motion to Reconsider at 1.

II. ISSUES RAISED IN THE MOTION TO RECONSIDER

The Commission's regulations establish the following legal standard for a motion for reconsideration under 14 DCMR § 3823.1 (2004): “[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; provided, that an order issued on reconsideration is not subject to reconsideration.” Mr. Brookens requested reconsideration on the following grounds:⁶

1. Mr. Brookens Has a Right to a Hearing on the Commission’s Determination that He Lacks a “Substantial Interest” in the Proceeding;
2. Mr. Brookens Has Demonstrated a Substantial Interest in the Outcome of the Proceeding;
3. The Commission Has Mis-Read the Unauthorized Practice of Law Decision—As it Applies to D.C. Agencies.

⁵ 14 DCMR § 3812.3 (2004) provides the following: “Any person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.

⁶ The issues on reconsideration are stated here using the language of Mr. Brookens in each of the three (3) section headings of the Motion to Reconsider. *See* Motion to Reconsider at 1-6.

