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.

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[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 Accommodation[4] 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

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[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.

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[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.

Motion to Reconsider at 1-6.

III. DISCUSSION

1. Mr. Brookens Has a Right to a Hearing on the Commission's Determination that He Lacks a "Substantial Interest" in the Proceeding

Mr. Brookens asserts that the Commission erred in its December 11 Order by failing to afford him the right to a hearing on his Motion to Intervene, specifically to rebut the Housing Provider's assertion to the Commission that Mr. Brookens no longer resides at the subject Housing Accommodation.[7] *See* Motion to Reconsider at 1-4.

The Commission observes that its regulations governing intervention, at 14 DCMR § 3810 (2004),[8] do not require that the Commission hold a hearing prior to deciding a motion to intervene. Mr. Brookens does not contest that the Commission properly complied with the

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[7] The Commission, in its discretion, has paraphrased Mr. Brookens' argument on this issue, consistent with the language in the Motion to Reconsider, but stated in a manner that identifies clearly Mr. Brookens' assertions regarding his right to a hearing on the Motion to Intervene. *See. e.g.,* Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9. The Commission observes that Mr. Brookens included in this section of the Motion to Reconsider detailed assertions unrelated to the Motion to Intervene, or the Commission's December 11 Order, including among others, allegations of violations of Mr. Brookens' rights under the "Tenant Opportunity to Purchase Act," D.C. OFFICIAL CODE §§ 42-3401 *et seq.* (2001) (TOPA). Motion to Reconsider at 1-4. For example, as party of the Motion to Reconsider addressing Mr. Brookens' request for a hearing, Mr. Brookens states the following:

> More importantly, Mr. Brookens, as a bona fide tenant had the proper and legal right to purchase his apartment—along with all other the [sic] tenants in the building, collectively, Tenant Opportunity to Purchase Act . . . . For the Dorchester owners to refuse to sell Mr. Brookens and his fellow Dorchester tenants the property when the tenants raised the $11,000,000 demand price, and sell to its current ownership group, let [sic] by John Hoskinson, for $4.9 million, as reported in the Washington Post, is just prima facie retaliatory evidence under TOPA, as evicting Mr .Brookens—then an elected Dorchester House Tenant Organization, "Official" entitled to statutory protections.

Motion to Reconsider at 3-4 (emphasis in original).

[8] 14 DCMR § 3810 (2004) provides the following:

> 3810.1 Any person not a party to an appeal, but having a substantial interest in a case pending before the Commission, may file in writing a motion for leave to intervene.

requirements of 14 DCMR § 3810 (2004) in its December 11 Order. *See* Motion to Reconsider at 1-4. Furthermore, the Commission observes that the right to a hearing set forth in the DCAPA only applies to parties in a case. D.C. OFFICIAL CODE §§ 2-509(a)-(b) (2001).[9] The record does not indicate, nor does Mr. Brookens assert, that he was granted party status by OAH or the Commission in this case. Finally, the Commission observes that Mr. Brookens has not set forth in his Motion to Reconsider any Constitutional considerations, federal or local statute or regulation, or other relevant legal precedent (e.g., case law) that support his contention that the Commission was required to hold a hearing in this case prior to determining a motion to intervene.[10] *See* Motion to Reconsider at 1-4.[11]

3810.2 Motions shall describe in detail the position and interest of the moving party and the grounds of the proposed intervention.

3810.3 Any party may file an opposition to the motion.

3810.4 The Commission may grant or deny the motion, or attach conditions to the participation of the moving party if granted.

[9] D.C. OFFICIAL CODE §§ 2-509(a)-(b) (2001) provide, in relevant part, the following (emphasis added):

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be . . . .

(b) . . . Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts . . . .

[10] The Commission observes that the Motion to Reconsider included a lengthy quotation that was identified as a passage from a Commission decision dated September 9, 1982, "between these same parties," and "on this very point." Motion to Reconsider at 2. Mr. Brookens failed to provide either the case name or the case number associated with the quotation. *See* Motion to Reconsider at 2. However, the Commission has identified Hagner Mgmt. Corp. v. Tenants of the Dorchester House Apartments, TP 3788 (RHC Sept. 9, 1982), which matches the date provided by Mr. Brookens, and contains the same language as quoted by Mr. Brookens in the Motion to Reconsider. *Compare* Hagner Mgmt. Corp., TP 3788 at 3, *with* Motion to Reconsider at 2. For the purposes of this Order, the Commission will assume that Mr. Brookens intended to cite Hagner Mgmt. Corp., TP 3788.

The Commission observes that its decision in Hagner Mgmt. Corp., TP 3788, did not discuss, or otherwise involve, a motion to intervene, or the interpretation and application of the Commission's regulations governing

For the foregoing reasons, the Commission is satisfied that it was not required to hold a hearing on Mr. Brookens' Motion to Intervene. Reconsideration of this issue is thus denied. *See* 14 DCMR § 3823.3.[12]

2. Mr. Brookens Has Demonstrated a Substantial Interest in the Outcome of the Proceeding

Mr. Brookens states that he has a right to intervene in these proceedings to "protect his property rights to 'rent ceiling reductions' and any refund derived therefrom."[13] Motion to

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intervention. *See* Hagner Mgmt. Corp., TP 3788 at 3. Unlike Mr. Brookens in this case, who the record reflects was never made a party to the case, the housing provider in Hagner Mgmt. Corp., TP 3788, was found by the Rent Administrator to be the owner of the subject housing accommodation, and named as a party to that case, without a hearing to present rebuttal evidence. *See id.* In that case, the Commission determined that the Rent Administrator erred by conducting a *sua sponte* review of evidence regarding the identity of the owner of the housing accommodation, without providing the parties to the case the opportunity to present evidence and argument on that issue. *See id.*

As stated *supra* at 5, the Commission's review of the record does not indicate that Mr. Brookens was granted party status by OAH or the Commission in this case, and therefore he is not entitled to same rights as "parties" to a case, under the DCAPA.

[11] The Commission notes that the allegation that Mr. Brookens seeks to contest through a hearing – namely, the Housing Provider's assertion that Mr. Brookens has not resided at the Housing Accommodation for an extended period of time – is, at least arguably, supported by Mr. Brookens' assertion regarding his status as a resident. *See* Motion to Reconsider at 4 (stating that "Mr. Brookens . . . was evicted from the Dorchester House Apartments . . .").

[12] 14 DCMR § 3823.3 (2004) provides the following: "Within fifteen (15) days of filing of the motion [for reconsideration], the Commission shall grant the motion, deny the motion or enlarge the time for later disposition of the motion."

[13] The Commission, in its discretion, has paraphrased Mr. Brookens' arguments on this issue, consistent with the language in the Motion to Reconsider, but stated in a manner that identifies clearly Mr. Brooken's allegations regarding his substantial interest in this case. *See. e.g.*, Ahmed, Inc., RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835at n.9. The Commission observes that Mr. Brookens included in this section of the Motion to Reconsider statements related to his involvement in prior tenant petitions, from 1979 and 1985, respectively, as well as statements regarding assistance that he provided to other tenants in this matter, that appear to be wholly unrelated to whether Mr. Brookens has a substantial interest in this case. Motion to Reconsider at 4-5. For example, Mr. Brookens provided that:

> Mr. Brookens, the landlord will concede, was evicted from the Dorchester House Apartments when his rent "was paid in full." Mr. Brookens assisted Mr. Carlton Mobley, Apartment 711, in presenting to the Rent Administrator the landlord's fraudulent scheme to illegally raise the Dorchester Tenants['] rent via an improper comparable [sic] and illegal air-conditioning

Reconsider at 6. In support of this issue, Mr. Brookens cites to the D.C. Superior Court Civil Procedure Rule, Rule 24(a) governing "intervention of right," and states that he was designated "by the tenants in 1979 to file Tenant Petition 3788 . . .and in TP 11,552 . . . in 1985."[14] *Id.* at 5.

Under the Commission's rules, a motion for reconsideration "[s]hall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful." 14 DCMR § 3823.2 (2004). Denial of a motion for reconsideration will result from a party's failure to set forth such specific grounds of error or illegality in the Commission's decision. *See, e.g.*, Stone v. Keller, TP 27,033 (RHC Mar. 24, 2009) at 11 - 14; Tenants of 5112 MacArthur Blvd., N.W. v. 5112 MacArthur L.P., CI 20,791 (RHC July 2, 2004); Byrd v. Reaves, TP 26,195 (RHC Aug. 8, 2002).

The Commission determines that Mr. Brookens has failed to set forth specific grounds on which he considers the determination in the December 11 Order that he did not have a "substantial interest" in the outcome of this case to be erroneous or unlawful. 14 DCMR § 3823.2 (2004); Stone, TP 27,033 at 11-14; Tenants of 5112 MacArthur Blvd., N.W., CI 20,791; Byrd, TP 26,195. *See also* Motion to Reconsider at 4-6. Specifically, Mr. Brookens has failed to

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> charges . . . . When Mr. Brookens was designated by the tenants in 1979 to file Tenant Petition 3788, Benoit Brookens et. [sic] al. v. Hagner Management Corporation and in TP 11,552, Benoit Brookens et .al. [sic] v. Bernard Gerwirz, et. [sic] al. in 1985, anyone could, if willing, serve as the tenants' representative—and still can . . . . At the core of the tenant petitions, T/P 3788, were challenges to the rent ceilings and, the illegal "air conditioning" charges carried over into Tenant Petitions, T/Ps 11,552 and 12,085 . . . .

[14] The Commission notes that while Mr. Brookens cites to D.C. Sup. Ct. R. Civ. Pro. 24(a) governing "intervention of right," Mr. Brookens has not cited any relevant caselaw demonstrating that the Commission has adopted the standards contained in D.C. Sup. Ct. R. Civ. Pro. 24(a) ("Intervention of right. -- Upon timely application anyone shall be permitted to intervene in an action: (1) When applicable law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."). *See* Motion to Reconsider at 4-6.

provide legal support (or "specific grounds" under 14 DCMR § 3823.2 (2004)) that the Commission erred either through an error of law under the Act or lack of substantial evidence in support of its following determinations in the December 11 Order:[15] first, that Mr. Brookens had not established that he retains legal status as a "tenant" under the Act at the Housing Accommodation; second, that he failed to show any specific legal interests or injuries arising from the outcome of this appeal, equivalent to the status or interests of current tenants at the Housing Accommodation; and finally, that Mr. Brookens 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, as required by 14 DCMR § 3812.3 (2004). *Id.* at 6-8.

Thus, reconsideration of this issue is denied. 14 DCMR § 3823.3 (2004).

3. The Commission Has Mis-Read the Unauthorized Practice of Law Decision—As it Applies to D.C. Agencies

In his third, and final, issue presented in the Motion to Reconsider, Mr. Brookens contends that the Commission "continues to mis-read the Court of Appeals decision regarding Mr. Brookens[']] right to represent himself before D.C[.] Agencies."[16] Motion to Reconsider at

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[15] For example, the Commission's general standard of review of OAH decisions is contained in 14 DCMR § 3807.1 (2004):

> [T]he Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

14 DCMR § 3807.1 (2004). *See, e.g.*, 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009).

[16] The Commission observes that Mr. Brookens fails to identify the case name, case number, or the date of the decision that he refers to in his discussion of this issue. *See* Motion to Reconsider at 6-7. However, the

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The Commission notes that its December 11 Order was based primarily on Mr. Brookens' failure to prove that he had a substantial interest in this case, in accordance with 14 DCMR § 3810.1 (2004). In support of this determination, the Commission explained that while Mr. Brookens identified himself as "'Tenant Representative' and 'Class Representative,' for '[a]ll affected Tenants' or a 'class of affected tenants,'" Mr. Brookens had failed to "demonstrate

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Commission notes that in its December 11 Order, the Commission referenced the following decision by the D.C. Court of Appeals (DCCA) related to Mr. Brookens' authority to practice law in the District of Columbia: Brookens v. Comm. On Unauthorized Practice of Law, 538 A.2d 1120 (D.C. 1988). December 11 Order at 8. For the purposes of this Order, the Commission will assume that Mr. Brookens intended to cite Brookens, 538 A.2d 1120.

In Brookens, 538 A.2d 1120, the DCCA held that Mr. Brookens was not prohibited from providing "lay representation" to parties before the D.C. Rental Accommodations Office (RAO) (later renamed RACD, *see supra* at p.1 n.1). *See id.* at 1126. This holding was based on the following regulation, which was in place at the time of Mr. Brookens' contested appearances before RAO: "[e]ach party to a petition may choose to represent himself or herself or may choose to be represented by another person . . . . The representative of a party before the RAO or the Commission does not have to be an attorney." *See id.* at 1126 n.14 (quoting 14 DCMR § 3202.1 (1983)). However, the DCCA observed that 14 DCMR § 3202.1 (1983) had been amended during the pendency of Mr. Brookens' appeal to limit lay representation before both RACD and the Commission. *See id.* (citing 14 DCMR § 3812.4 (1986)). The amended regulation cited by the DCCA is identical to the version of the regulation currently in effect, and provides, in relevant part, as follows:

> A person may be represented in any proceeding before the Commission by one (1) of the following:
>
> (a) An attorney admitted to the practice of law in the District of Columbia, pursuant to the Rules of the District of Columbia Court of Appeals;
>
> (b) An attorney admitted to practice before the highest court of any state upon the granting by the Commission of a motion for special appearance;
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> (c) Any law student practicing under the supervision of an attorney admitted to practice in the District of Columbia as part of a program approved by an accredited law school for credit . . .;
>
> (d) A family member or close personal friend of a party, where the party is incapable of presenting his or her case because of a language barrier, physical infirmity, or mental incapacity . . . .

14 DCMR § 3812.4 (2004).

Based on its review of the record, the Commission is satisfied that Mr. Brookens has failed to establish that he qualifies as a lay representative in this case under any of the aforementioned conditions. 14 DCMR § 3812.4 (2004). Therefore, the Commission is satisfied that its December 11 Order is consistent with the DCCA's holding in Brookens, 538 A.2d 1120, as well as its own regulations.

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.'" December 11 Order at 7-8. Additionally, the Commission noted that, in accordance with the DCCA's decision in Brookens, 538 A.2d 1122, Mr. Brookens was prohibited from practicing law in the District of Columbia, and therefore acting in the capacity of counsel for the tenants in this case. *See id.* at 8.

The Commission observes that in his Motion to Reconsider, Mr. Brookens fails to set forth "specific grounds" to support his contention that the Commission's reference to his inability to practice law in the District of Columbia, in accordance with the DCCA's decision in Brookens, 538 A.2d at 1122, renders its December 11 Order erroneous or unlawful. 14 DCMR § 3823.2; Stone, TP 27,033 at 11-14; Tenants of 5112 MacArthur Blvd., N.W., CI 20,791; Byrd, TP 26,195. The Commission is also otherwise unable to identify "specific grounds" provided by Mr. Brookens to support a contention that the Commission erred in determining that he lacked legal authority to represent all of the tenants, or a class of tenants, involved in this case under the Act or other District of Columbia law. *See* 14 DCMR § 3823.2 (2004); Stone, TP 27,033 at 11-14; Tenants of 5112 MacArthur Blvd., N.W., CI 20,791; Byrd, TP 26,195. Thus, reconsideration of this issue is denied. 14 DCMR § 3823.3 (2004).

IV. CONCLUSION

For the foregoing reasons, Mr. Brookens' Motion to Reconsider is denied.

SO ORDERED.

PETER SZEGEDY-MASZAK, CHAIRMAN

MARTA BERKLEY, 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:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO RECONSIDER DENIAL OF MOTION TO INTERVENE BY BENOIT BROOKENS** in **RH-SF-09-20,098** was mailed, postage prepaid, by first class U.S. mail on this **3rd day** of January, **2014** to:

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