

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SF-09-20,098

In re: 2480 16th Street, NW

Ward One (1)

**RUDOLPH DOUGLAS, KOW HAGAN, ROBERT EBEL, TY MITCHELL,
ELEANOR JOHNSON, & PETER PETROPOULOS**
Tenants/Appellants/Cross-Appellees

v.

DORCHESTER HOUSE, ASSOCIATES, L.L.C.
Housing Provider/Appellee/Cross-Appellant

**ORDER REGARDING DEATH OF
TENANT/APPELLANT/CROSS-APPELLEE ROBERT EBEL AND SCHEDULING OF
NEW DATE FOR APPELLATE HEARING**

April 10, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is before the Commission on three notices of appeal, as follows: (1) an August 1, 2011 Notice of Appeal filed by Kow Hagan, Robert Ebel, Ty Mitchell, Eleanor Johnson, and Peter Petropoulos, represented by Attorney B. Marian Chou; (2) an August 2, 2011 Notice of Appeal filed by Tenant Rudolph Douglas in his individual capacity; and (3) an August 25, 2012 Notice of Appeal filed by Dorchester House Associates, LLC (Housing Provider). In her "Second Motion to Withdraw as Represented Tenant's [sic] Counsel, Except Attorney [sic] Fees" (Second Motion to Withdraw), Attorney Chou represented that her client, Tenant Robert Ebel (Mr. Ebel) had died.¹ See Second Motion to Withdraw at 2.

The Commission has no rule on the effect of the death of a party to an appeal. The Commission follows as guidance, as far as practicable, the procedures of the District of

¹ The Commission is issuing an order on the Second Motion to Withdraw on the same date as the instant Order.

Columbia Court of Appeals (DCCA) or the Superior Court of the District of Columbia (Superior Court) when the Commission's rules are silent on an issue. 14 DCMR § 3828.1 (2004).² The DCCA rule related to death of a party provides, in pertinent part:

If a party dies after a notice of appeal has been filed or while a proceeding is pending in this court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

D.C. App. R. 43(a)(1) (2014). Similarly, the Superior Court rules provide the following:

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Super. Ct. Civ. R. 25(a)(1) (2014).

The Commission has previously addressed the death of a party in the cases of Hardy v. Jenkins, RH-TP-10-30,009 (RHC Mar. 29, 2012), Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011), and Mersha v. Marina Towers Apartments Town Center Limited Partnership, TP 24,970 (RHC Feb. 19, 2003). In all three cases, the Commission followed the guidance of D.C. App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1), recited *supra*. In each case, the Commission allowed ninety (90) days from the date of suggestion of death on the record, for a "duly-appointed personal representative" to file a motion for substitution for the decedent. See

² 14 DCMR § 3828.1 provides the following:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4. Each case cautioned that, if no motion for substitution was filed by the end of the ninety (90) day period, the Commission would dismiss the appeal *with prejudice*. See Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8-9; Mersha, TP 24,970 at 4.

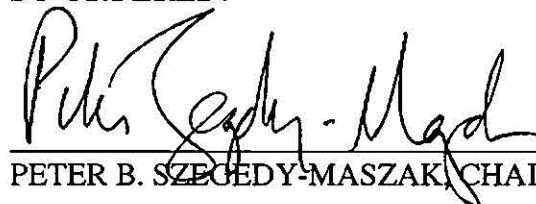
The Commission's review of the record in this case reveals that Attorney Chou, who is the attorney of record for Mr. Ebel in this appeal, informed the Commission of Mr. Ebel's death in her Second Motion to Withdraw, filed on March 25, 2015. See Second Motion to Withdraw at 2. Ms. Chou's notice to the Commission is in the nature of a suggestion of death. See D.C. App. R. 43(a)(1). In light of the foregoing, and in accordance with relevant Commission precedent described *supra* at 2-3, the Commission will provide Mr. Ebel's duly-appointed personal representative a period of ninety (90) days from the date of the suggestion of death on March 25, 2015 to file a motion for substitution, substituting the personal representative as a party to this case, in lieu of Mr. Ebel. See D.C. App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1); Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4. The Commission calculates that the 90-day period will expire on June 23, 2015. If no personal representative for Mr. Ebel files a motion for substitution with the Commission by June 23, 2015, the Commission will dismiss Mr. Ebel as a party to this appeal, *with prejudice*.³ See Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4.

The Commission observes that a hearing on the merits of the parties' respective appeals is currently scheduled for May 21, 2015, more than a month prior to the 90-day deadline for Mr. Ebel's personal representative to file a motion for substitution in this case. See Douglas v.

³ The dismissal of Mr. Ebel as a party to this appeal will have no effect on the four (4) remaining tenants who joined him in the filing of the August 1, 2011 Notice of Appeal, Kow Hagan, Ty Mitchell, Eleanor Johnson, and Peter Petropoulos.

Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Apr. 8, 2015) (rescheduling hearing date for May 21, 2015). Accordingly, the Commission will contact the parties to schedule a new hearing for a date after June 23, 2015, to allow Mr. Ebel's personal representative adequate time to file a motion for substitution. *See* D.C. App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1); Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4. The Commission will separately issue a revised Notice of Hearing in accord with this Order once a new hearing date has been mutually agreed by the parties.⁴

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."

⁴ Because of the current uncertainty regarding whether, by June 23, 2015, a personal representative of Mr. Ebel will emerge and wish to participate further as a tenant-party in this appeal, the Clerk of the Court will only contact the parties in this appeal about a hearing date for this appeal after there has been a final determination by the Commission that a personal representative of Mr. Ebel will or will not have tenant-party status in this appeal. Such determination by the Commission will occur no later than June 23, 2015.

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 foregoing **ORDER** in RH-SF-09-20,098 was mailed, postage prepaid, by first class U.S. mail on this **10th day of April, 2015**:

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