

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-SF-09-20,098

In re: 2480 16<sup>th</sup> 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 ON MOTION TO RECONSIDER DENIAL OF  
SECOND MOTION TO INTERVENE**

**April 8, 2015**

**SZEGEDY-MASZAK, CHAIRMAN.** On November 15, 2013, Benoit Brookens filed with the Commission a motion to intervene (First Motion to Intervene) in the appeal of the final order of the Office of Administrative Hearings (OAH) in the above-captioned case, Dorchester House Associates, LLC v. Tenants of 2480 16<sup>th</sup> Street, NW, RH-SF-09-20,098 (OAH May 20, 2011). On December 13, 2013, the Commission issued an order denying the First Motion to Intervene, determining that Mr. Brookens had failed to demonstrate a “substantial interest” in the outcome of the appeal, under 14 DCMR § 3810.1 (2004).<sup>1</sup> Dorchester House Assocs. LLC v. Tenants of 2480 16<sup>th</sup> St., NW, RH-SF-09-20,098 (RHC Dec. 11, 2013) (Order Denying First Motion to Intervene).

On March 24, 2015, Mr. Brookens filed with the Commission “Benoit Brookens, Dorchester Tenant, Motion to Intervene” (Second Motion to Intervene). The Commission

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<sup>1</sup> The Commission’s regulations discuss intervention at 14 DCMR § 3810.1, as follows: “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.”

observed, based on its review of the record, that the Second Motion to Intervene failed to provide any additional information beyond that provided in the First Motion to Intervene regarding Mr. Brookens' purported "substantial interest" in this case, under 14 DCMR § 3810.1. Tenants of 2480 16<sup>th</sup> St., NW v. Dorchester House, Assocs., LLC, RH-SF-09-20,098 (RHC Mar. 24, 2015) (Order Denying Second Motion to Intervene); *compare* Second Motion to Intervene, *with* First Motion to Intervene. Additionally, the Commission determined that the "law of the case" doctrine, prohibiting the Commission from reopening and reconsidering an issue that was previously resolved in a particular case, applied to Mr. Brookens' Second Motion to Intervene, and denied the Motion. *See, e.g., King v. McKinney*, TP 27,264 (RHC June 17, 2005) (citing *Lynn v. Lynn*, 617 A.2d 963 (D.C. 1992)); *Dias v. Perry*, TP 24,349 (RHC July 30, 2004); *Goff v. Edward Tiffey Co.*, TP 24,855 (RHC Dec. 29, 2000).

On March 27, 2015, Mr. Brookens filed a "Motion to Reconsider Denial of Motion to Intervene" (Motion to Reconsider), which is the subject of the instant order.

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." Under 14 DCMR § 3823.2, "[t]he motion for reconsideration . . . shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful."

The Commission observes that the majority of the Second Motion to Reconsider is a further reiteration of the issues considered and rejected in the Commission's Order Denying First Motion to Intervene. *See* Second Motion to Intervene. The Commission herein will only

consider those allegations of error related to the Commission's Order Denying Second Motion to Intervene. *See* 14 DCMR § 3823.1-.2.

The only alleged error arising out of the Commission's Order Denying Second Motion to Intervene, i.e., determining that the "law of the case" doctrine applies to the Second Motion to Intervene, is that Mr. Brookens' circumstances changed between the Order Denying First Motion to Intervene and the Second Motion to Intervene, and thus the law of the case does not apply. *See* Second Motion to Intervene at 1-6. Specifically, Mr. Brookens alleges that his interests are no longer adequately protected by the parties in this case due to the Commission's February 6, 2014 Order limiting the "class of tenants" representing the interests of the Dorchester Tenants Association from 123 tenants to 5. *Id.* at 2-4 (citing Tenants of 2480 16<sup>th</sup> St., NW v. Dorchester House, Assocs., LLC, RH-SF-09-20,098 (Feb. 6, 2014)) (February 6, 2014 Order).

## I. DISCUSSION

As the Commission stated in the Order Denying Second Motion to Intervene, under the law of the case doctrine, a court is precluded from reexamining issues raised in a prior appeal, except under "extraordinary circumstances." Lynn v. Lynn, 617 A.2d 963, 970 (D.C. 1992) (quoting United States v. Turtle Mountain Band of Chippewa Indians, 612 F.2d 517, 521 (Ct. Cl. 1979)); *see, e.g.*, Thoubboron v. Ford Motor Co., 809 A.2d 1204, 1215 (D.C. 2002) (refusing to reconsider issue of attorney's fees, where the issue was determined in a previous decision); Lenkin Co. Mgmt., Inc. v. D.C. Rental Hous. Comm'n, 677 A.2d 46, 48 (D.C. 1996) (explaining that the law of the case doctrine may be "disregarded 'in a clear case showing that the earlier adjudication was plainly wrong and that its application would work a manifest injustice'" (quoting Morse v. Morse, 213 A.2d 581, 583 (D.C. 1988))). It is Mr. Brookens' contention now that the Commission's February 6, 2014 Order, identifying the parties to the instant appeal,

