

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 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 16th 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).¹ Dorchester House Assocs. LLC v. Tenants of 2480 16th 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

¹ 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 16th 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 16th 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,

constitutes such “extraordinary circumstances” to overturn the previous determination that he lacked a “substantial interest” in this appeal. *See* Second Motion to Reconsider.

The Commission observes that it determined that Mr. Brookens lacked a “substantial interest” in the instant appeal for the following reasons: (1) Mr. Brookens did not establish that he was a “tenant,” as that term is defined by the Act, of the Housing Accommodation located at 2480 16th St., NW (Housing Accommodation); (2) Mr. Brookens failed to demonstrate any specific legal interests or injuries arising from the outcome of this appeal; and (3) Mr. Brookens did not establish his authority to act in a representative capacity for any of the tenants of the Housing Accommodation. Order Denying First Motion to Intervene at 6-8 (citing 14 DCMR § 3810.1).²

Based on its review of the record, the Commission is satisfied that the February 6, 2014 Order did not constitute the “extraordinary circumstances” that are required to overturn the Commission’s determination that Mr. Brookens lacks a substantial interest in this appeal. February 6, 2014 Order at 1-7. The February 6, 2014 Order merely identified those tenants who are represented on appeal by Attorney B. Marian Chou, and are thus parties to the notice of appeal filed by Ms. Chou on August 1, 2011: Kow Hagan, Robert Ebel, Ty Mitchell, Eleanor Johnson, and Peter Petropoulos. *Id.* The February 6, 2014 Order did not address, alter or otherwise affect the determinations that Mr. Brookens has not established that he is a tenant of the Housing Accommodation, that he has any legal interest or potential injury arising from this appeal, or that Mr. Brookens has authority to act in a representative capacity. *Id.*

² 14 DCMR § 3810.1 provides 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.”

Thus, in the absence of (1) Mr. Brookens' legal status as a "tenant" under the Act, (2) any demonstrated legal interest in or potential injury arising from this appeal with respect to Mr. Brookens, or (3) authority under the Act for Mr. Brookens to serve in a representative capacity for the named affected tenants in this appeal under the Act, the Commission in its discretion determines that its February 6, 2014 Order does not constitute the "extraordinary circumstances" legally required for the Commission to overturn its prior determination that Mr. Brookens lacks a "substantial interest" for intervention in this appeal. *See* February 6, 2014 Order at 1-7. *See also* 14 DCMR § 3810.1

II. CONCLUSION

For the foregoing reasons, the Second Motion to Reconsider is denied; Mr. Brookens is denied intervention, and thus party status, in the above-captioned appeal. 14 DCMR §§ 3810.1, 3823.1-.2; Thoubboron, 809 A.2d at 1215; Lenkin Co. Mgmt., Inc., 677 A.2d at 48; Lynn, 617 A.2d at 970.

SO ORDERED.


PETER SZEGEDY-MASZAK, CHAIRMAN


CLAUDIA L. MCKOIN, COMMISSIONER

CERTIFICATE OF SERVICE

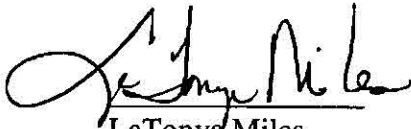
I certify that a copy of the foregoing **ORDER ON MOTION TO RECONSIDER DENIAL OF SECOND MOTION TO INTERVENE** in RH-SF-09-20,098 was mailed, postage prepaid, by first class U.S. mail on this **8th day of April, 2015**:

Richard W. Luchs, Esq.
Roger D. Luchs, Esq.
Greenstein Delorme & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, DC 20036-5605

B. Marian Chou, Esq.
717 D Street, N.W.
#415
Washington, D.C. 20004

Mr. Rudolph Douglas
2480 16th Street, N.W., Apt. 514
Washington, DC 20009

Mr. Benoit Brookens
PO Box 2551
Washington, DC 20013-2551



LaTonya Miles
Clerk of Court
(202) 442-8949