

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 SECOND MOTION TO WITHDRAW

April 10, 2015

SZEGEDY-MASZAK, CHAIRMAN. On January 30, 2015, B. Marian Chou (Ms. Chou) filed “Tenants’ Counsel’s Motion to Withdraw as Attorney on Appellate Issues Except Attorney [sic] Fees” (First Motion to Withdraw). The Commission issued an Order on February 19, 2015 denying the First Motion to Withdraw, explaining that Ms. Chou had failed to comply with the relevant regulations governing an attorney’s withdrawal from representation, at 14 DCMR § 3813.1-3 (2004). *See infra* at 2. On March 25, 2015, Ms. Chou filed a “Second Motion to Withdraw as Represented Tenant’s [sic] Counsel, Except Attorney [sic] Fees” (Second Motion to Withdraw).¹ The only opposition to the Second Motion to Withdraw was filed by Tenant Eleanor Johnson (Ms. Johnson’s Opposition) on April 1, 2015.

¹ In accordance with the Commission’s Order dated February 6, 2014, Ms. Chou represents Tenants Kow Hagan, Robert Ebel, Ty Mitchell, Eleanor Johnson, and Peter Petropoulos (collectively, the Dorchester Tenants), in the above-captioned matter. Tenants of 2480 16th St., NW v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Feb. 5, 2014).

On April 2, 2015, the Commission convened for a hearing in the above-captioned case. Rather than addressing the merits of the parties' respective notices of appeal,² the hearing instead provided each party with an opportunity to address pending preliminary matters, particularly the Second Motion to Withdraw. *See* Hearing CD (RHC Apr. 2, 2015).

I. **THE SECOND MOTION TO WITHDRAW**

The regulations governing an attorney's withdrawal from a case provide the following, in relevant part:

3813.1 If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

3813.2 The motion shall state whether the party consents to or opposes the motion and whether the party will be unrepresented or will have substitute representation. A copy of the motion shall be served on the party and the party advised that he or she has the right to oppose the motion.

3813.3 The motion shall state the specific reasons for withdrawal and shall state whether the absence of representation will prejudice the rights of the party.

14 DCMR § 3813.1-.3 (2004).

The Commission's review of the Second Motion to Withdraw reveals that Ms. Chou complied with 14 DCMR § 3813.1, requiring a written motion for application to withdraw as counsel. *See* Second Motion to Withdraw.

The Commission observes that the Second Motion to Withdraw only partially complies with 14 DCMR § 3813.2: Ms. Chou provided that, at most, Ty Mitchell and Peter Petropoulos consent to her withdrawal, while at least Eleanor Johnson opposes the withdrawal. *See* Second

² The Commission notes that three (3) notices of appeal were filed in this case, as follows: (1) an August 1, 2011 Notice of Appeal filed by the Dorchester Tenants; (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).

Motion to Withdraw at 2; *see also* Ms. Johnson's Opposition. The Second Motion to Withdraw does not indicate whether Kow Hagan consents or opposes the motion, and provides that Robert Ebel has died.³ *See id.* The Second Motion to Withdraw does not provide whether the tenants will be unrepresented or will have substitute representation. *Id.* The Commission is satisfied that a copy of the Second Motion to Withdraw was served on all of the tenants represented by Ms. Chou, except for Robert Ebel (*see supra* at n.3); the Commission's review of the motion does not reveal that it advises the tenants that they have the right to oppose the motion. *Id.* at 4.

Ms. Chou's representations to the Commission at the April 2, 2015 hearing were largely repetitive of the contents of the Second Motion to Withdraw: she was unable to provide written consent to her withdrawal from any of her clients, but she stated that she did not believe that Peter Petropoulos or Ty Mitchell opposed the withdrawal. *See* Hearing CD (RHC Apr. 2, 2015). No representations were made at the hearing from any party regarding whether the Represented Tenants would be unrepresented or would have substitute counsel. *Id.*

Finally, the Commission is satisfied that the Second Motion to Withdraw complied with 14 DCMR § 3813.3, requiring that a motion for withdrawal state the reasons for the withdrawal, and whether the absence of representation will prejudice the parties. Ms. Chou provided that a lack of response and cooperation in obtaining consent to continue providing legal services to the Dorchester Tenants in the appellate proceedings before the Commission constituted a "breakdown of the attorney/client relationship." Second Motion to Withdraw at 1-2. Additionally, Ms. Chou provided the following three (3) reasons for her withdrawal:

(1) a situation has arisen such that continued representation for her [sic] under the circumstances has been rendered impossible, (2) the Appellant[s] and Ms.

³ The Commission is issuing a separate Order on this same date, April 10, 2015, addressing the implications of the death of Tenant Robert Ebel.

Chou have irreconcilable disputes on how to proceed [in] the case, and (3) it will be in the best interest of the clients to allow Ms. Chou to withdraw from representation of the clients.

Id. at 3. Ms. Chou asserted that the Dorchester Tenants would not be prejudiced by her withdrawal because they “have more than time [sic] to retain counsel should they decide to proceed with litigation.” *Id.*

II. DISCUSSION

The Commission is mindful of Ms. Chou’s representation that there has been a breakdown in the attorney-client relationship between herself and the Dorchester Tenants, which the Commission notes is a compelling reason to allow an attorney to withdraw from representation. *See, e.g. Atl. Petroleum Corp. v. Jackson Oil Co.*, 572 A.2d 469, 473 (D.C. 1990) (stating that ““in the absence of substantial prejudice to [plaintiff] and unnecessary delay, [her] attorneys should be allowed to withdraw should the court conclude that there has been a *complete breakdown* in the attorney-client relationship”” (quoting *Blessing v. Dow Chem. Co.*, 521 A.2d 1176 (Me. 1987) (emphasis original))); *Dep’t of Hous. & Cmty. Dev. v. 1433 T St. Assocs., LLC*, RH-SC-06-002 (RHC July 14, 2014) (granting counsel’s motion to withdraw where it was warranted by counsel’s uncontested claim of a breakdown in its attorney-client relationship); *cf. Bell v. United States*, 950 A.2d 56 (D.C. 2008) (a criminal defendant may be entitled to appointment of new counsel if he can establish ““good cause, such as conflict of interest, a complete breakdown of communication, or an irreconcilable conflict . . .”” (quoting *Johnson v. United States*, 585 A.2d 766, 770-71 (D.C. 1991))).

Ms. Chou represents that she has had difficulty communicating with the Dorchester Tenants, that she and the Dorchester Tenants disagree on how to proceed in this case, and that her continued representation of the Dorchester Tenants “has been rendered impossible.” Second

Motion to Withdraw at 2-3. In contrast, Ms. Johnson's Opposition asserts that "Ms. Chou has our complete trust and cooperation" and that she believes that she has a "positive and collegial relationship" with Ms. Chou. *See* Ms. Johnson's Opposition at 1-3. The Commission notes that the very disagreement between Ms. Chou and Ms. Johnson regarding whether a breakdown in the attorney-client relationship has occurred, is in itself evidence of such a breakdown. *Compare* Second Motion to Withdraw, *with* Ms. Johnson's Opposition at 1-3.

Moreover, the Commission is satisfied that the Dorchester Tenants will not be prejudiced by Ms. Chou's withdrawal at this stage in the case. The Dorchester Tenants will have no less than two (2) months prior to the Commission's rescheduled hearing,⁴ to retain new counsel if they so choose. Additionally, an appellate brief has already been filed on behalf of the Dorchester Tenants by Ms. Chou, on November 12, 2013.

Finally, the Commission agrees with Ms. Chou that it would be "in the best interest of the [Dorchester Tenants] to allow Ms. Chou to withdraw," *see* Second Motion to Withdraw at 3, in light of Ms. Chou's apparent lapses in attention to important client interests and considerations during the course of the proceedings before the Commission, as, at minimum, evidenced by the following: (1) Ms. Chou appeared unaware of the parties that she represented in this appeal, *compare* Tenants of 2480 16th St., NW v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Feb. 6, 2014), *with* DTA Tenants Representation List; (2) the First Motion to Withdraw failed to comply with the Act's relevant regulations, as recited *supra*, *see* Tenants of 2480 16th St., NW, RH-SF-09-20,098 (RHC Feb. 19, 2014) (denying First Motion to Withdraw); and (3)

⁴ The Clerk of the Court will contact the parties in this appeal about a hearing date after there has been a final determination by the Commission regarding whether a personal representative of Mr. Ebel will or will not have tenant-party status in this appeal, in lieu of Mr. Ebel. Such determination by the Commission will occur no later than June 23, 2015. *See* Douglas v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Apr. 10, 2015) (Order).

the Second Motion to Withdraw was filed in on March 25, 2015, not allowing adequate time for the Represented Tenants or any other party to file an opposition prior to the April 2, 2015 hearing, *see* 14 DCMR §§ 3814.3, 3816.3 & 3816.5.⁵

In light of the foregoing, and particularly since Ms. Chou has asserted that her continued representation of the Dorchester Tenants would be “impossible,” the Commission is unable to conclude that Ms. Chou should remain in an attorney-client relationship from which she clearly wishes to withdraw and to which she does not appear to be reasonably committed, and therefore, the Commission grants the Second Motion to Withdraw. 14 DCMR §3813.1-.3; *see, e.g. Atl. Petroleum Corp.*, 572 A.2d at 473; 1433 T St. Assocs., LLC, RH-SC-06-002.

III. CONCLUSION

For the foregoing reasons, and particularly in light of the breakdown in the attorney-client relationship, the Commission grants the Second Motion to Withdraw. The Commission reminds the Represented Tenants (Kow Hagan, Robert Ebel (*see supra* at n.3), Ty Mitchell, Eleanor Johnson, and Peter Petropoulos), that they will each need to appear at the upcoming Commission hearing, unless they secure new counsel in the meantime to appear on their behalf. If any party does not appear at the Commission’s hearing, either in person or through counsel, their appeal may be subject to dismissal. *See, e.g., Carter v. Paget*, RH-TP-09-29,517 (RHC Dec. 11, 2013) (dismissing appeal where appellant failed to appear at the Commission’s hearing); Seyoum v.

⁵ 14 DCMR § 3814.3 provides as follows: “Any party may file a response in opposition to a motion within five (5) days after service of the motion.” 14 DCMR § 3816.3 provides the following: “When the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” 14 DCMR § 3816.5 provides the following: “If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.”

In accordance with 14 DCMR §§ 3814.3, 3816.3 & 3816.5, the Commission notes that period for filing an opposition to the Second Motion to Withdraw expired on April 6, 2015, four (4) days after the Commission’s April 2, 2015 hearing.

Harper, RH-TP-10-29,971 (RHC July 10, 2013) (dismissing appeal where neither party appeared at the Commission's hearing); Barakobe v. Van Metre Columbia Uptown Apartments, LLC, RH-TP-11-30-105 (RHC July 10, 2013) (dismissing appeal where the tenant/appellant failed to appear at the Commission's hearing). Each of the Represented Tenants is encouraged to contact the Commission's Clerk of the Court with any questions regarding the continuation of appellate proceedings and the rescheduled hearing.

SO ORDERED.


PETER B. SZEGEDY-MASZAR, 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."

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 ON SECOND MOTION TO WITHDRAW** 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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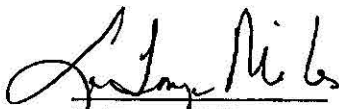
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