DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SF-09-20,098

In re: 2480 16th Street, NW

Ward One (1)

TENANTS OF 2480 16TH STREET, NW
Tenants/Appellants/Cross-Appellees

v.

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

ORDER

March 24, 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). The Commission gave three reasons for its denial of the First Motion to Intervene, as follows: (1) Mr. Brookens did not establish that he retains legal status as a "tenant" under the Act at the subject housing

[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."

accommodation, 2480 16th St., NW;[2] (2) Mr. Brookens did not demonstrate any specific legal interest or injury arising from the outcome of the appeal; and (3) Mr. Brookens did not demonstrate his authority to act in a representative capacity for "'all affected tenants' or a 'class of affected tenant,'" as alleged in the First Motion to Intervene. *Id.* at 6-8.

On March 24, 2015, Mr. Brookens filed with the Commission "Benoit Brookens, Dorchester Tenant, Motion to Intervene" (Second Motion to Intervene). The Commission observes, based on its review of the record, that the Second Motion to Intervene does not provide any additional information beyond what was provided in the First Motion to Intervene regarding Mr. Brookens' "substantial interest" in this case, under 14 DCMR § 3810.1. *Compare* Second Motion to Intervene, *with* First Motion to Intervene.

The Commission determines that the "law of the case" doctrine, prohibiting the Commission from reopening and reconsidering an issue that was previously resolved in a particular case, applies to Mr. Brookens' Second Motion to Intervene. *See, e.g.,* King v. McKinney, TP 27,264 (RHC June 17, 2005) (citing Lynn v. Lynn, 617 A.2d 963 (D.C. 1992)) ("The law of the case doctrine prohibits the Commission from reopening issues that the Commission resolved in an earlier appeal"); Dias v. Perry, TP 24,349 (RHC July 30, 2004) (refusing to reconsider Ms. Perry's status as a tenant, when the Commission had previously made a definitive ruling on the issue); Goff v. Edward Tiffey Co., TP 24,855 (RHC Dec. 29, 2000) (stating that where the housing provider did not appeal the hearing examiner's finding of housing code violations, the finding became the law of the case). Under the law of the case doctrine, a court is precluded from reexamining issues raised in a prior appeal, except under "extraordinary

[2] "Tenant" is a legally defined term under the Act, which states the following: "'Tenant' includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person."

circumstances." Lynn, 617 A.2d at 970 (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))).

The Commission is satisfied that extraordinary circumstances are not present in this case, where Mr. Brookens has not cited or otherwise provided controlling authority from the Act or applicable case law that contradicts the Commission's December 11, 2013 Order on this issue, nor has Mr. Brookens asserted or alleged that the Commission's prior decision on this issue was "clearly erroneous" or would "work a manifest injustice." Second Motion to Intervene; First Motion to Intervene; *see* Thoubboron, 809 A.2d at 1215; Lenkin Co. Mgmt., 677 A.2d at 48; Lynn, 617 A.2d at 970; Dorchester House Assocs. LLC, RH-SF-09-20,098 (RHC Dec. 11, 2013).

Accordingly, the Commission denies the Second Motion to Intervene.[3]

SO ORDERED.

PETER B. SZEGEDY-MASZAK, CHAIRMAN

[3] The Commission notes that a document entitled "Joint Brief of Dorchester Tenants Rudolph Douglas, Campbell Johnson, and Intervenor, Benoit Brookens" (Joint Brief) was filed on March 24, 2015. In light of the Commission's decision on Mr. Brookens' Second Motion to Intervene, *supra*, and December 11, 2013 decision on his First Motion to Intervene, the Commission is satisfied that Mr. Brookens is not a party to this appeal, and accordingly strikes and removes his name from the Joint Brief. *See* Dorchester House Assocs. LLC, RH-SF-09-20,098 (RHC Dec. 11, 2013).

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 **24th day** of **March, 2015**:

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