

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,366

RH-TP-06-28,577

In re: 301 G Street, S.W.

Ward Six (6)

AMERICAN RENTAL MANAGEMENT COMPANY

Housing Provider/Appellant/Cross-Appellee

v.

ARLENA CHANEY, et al.

Tenants/Appellees/Cross-Appellants

**ORDER ON MOTION FOR SERVICE OF DOCUMENTS AND REFERRAL OF
COUNSEL TO THE BAR**

January 23, 2015

McKOIN, COMMISSIONER. These consolidated cases arose under the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. Official Code § 42-3501.01 -3509.07, and came before the Commission on an appeal from the Office of Administrative Hearings (OAH), based on petitions filed in the Rental Accommodations and Conversion Division (RACD), Housing Regulation Administration (HRA), of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).¹ The applicable provisions of the Act, the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501 -510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern proceedings before the Commission.

¹ OAH assumed jurisdiction over tenant petitions from RACD on October 1, 2006, pursuant to § 6(b-1)(1) of the OAH Establishment Act, D.C. Law 16-83, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to the Department of Housing and Community Development (DHCD) by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2012 Repl.).

I. PROCEDURAL HISTORY

On December 12, 2014, the Commission issued its decision and order in the appeal and cross-appeal of tenant petitions RH-TP-06-28,366 and RH-TP-06-28,577 (Tenant Petitions). *See Am. Rental Mgmt. Co. v. Chaney*, RH-TP-06-28,366 and RH-TP-06-28,577 (RHC Dec. 12, 2014) (Decision and Order). On January 20, 2015, the Commission issued an order denying a motion for reconsideration (Motion for Reconsideration) filed by Arlena Chaney (Tenant Chaney), the sole tenant petitioner in RH-TP-06-28,366 and the president of the New Capitol Park Towers Tenant Association (Association), which represents sixty-seven (67) tenants, including Tenant Chaney (collectively, Tenants), in RH-TP-06-28,577. *See Am. Rental Mgmt. Co. v. Chaney*, RH-TP-06-28,366 and RH-TP-06-28,577 (RHC Jan. 20, 2014) (Order on Reconsideration).

In the Order on Reconsideration, the Commission noted the following:

Tenant Chaney states that the Motion for Reconsideration is filed by her as the president of the Association on behalf of the sixty-seven (67) individual Tenants who are parties to these consolidated cases. Motion for Reconsideration at 1. The Commission notes that counsel for the Tenants, Jamil Zouaoui, Esq., was denied, without prejudice, leave to withdraw and remains the attorney of record for the Tenants. Order on Motion to Withdraw as Counsel (RHC Sept. 2, 2014). Several Tenants, purportedly a majority of the board of the Association, asserted to the Commission by letter received September 19, 2014, that neither Mr. Zouaoui nor Tenant Chaney is authorized to represent the Tenants in this matter. Nonetheless, Tenant Chaney filed a notice of appearance as a lay representative of the Association on behalf of the individual Tenants on October 22, 2014. *See* Notice of Appearance at 1; *see also* 14 DCMR § 3812.1(d). As a courtesy, the Commission directed that all filings and orders were to be served on Mr. Zouaoui, Tenant Chaney, and the three members of the Association's board. *See* Notice of Ex Parte Communication (RHC Sept. 30, 2014).

Order on Reconsideration at 4-5 n.2.

Also on January 20, 2015, the Commission received the instant motion (Motion for Service and Referral), filed by Awad Mahmoud (Tenant Mahmoud). In his Motion for Service and Referral, Tenant Mahmoud requests that the Commission: (1) disqualify Mr. Zouaoui from representing the Tenants; (2) “refer[] [Mr. Zouaoui] to the District of Columbia Bar for disciplinary action;” and (3) “serve [Tenant Mahmoud] individually on any and all documents filed with it or issued by it as Mr. Zouaoui has repeatedly failed to inform the [T]enants, including [Tenant] Chaney, of the developments in this case.” Motion for Service and Referral at 7.

Tenant Mahmoud complains of conduct by Mr. Zouaoui that was fraudulent or deceptive, in conflict with the interests of his client(s), or otherwise in violation of the rules of professional conduct. *See id.* at 1-6. The conduct described, however, as well as the voluminous attached exhibits submitted in support of the Motion for Service and Referral, relate almost entirely to Mr. Zouaoui’s representation of some or all of the Tenants in exercising their rights under the Rental Housing Conversion and Sale Act of 1980 (Tenant Opportunity to Purchase Act or TOPA), D.C. Law 3-86, D.C. OFFICIAL CODE § 42-3401.01 *et seq.*, and a related case in the Superior Court of the District of Columbia, and only tangentially refer to Mr. Zouaoui’s failure to file a motion to withdraw as counsel before the Commission. *See id.* at 1-7 and exhibits 1-14.

II. DISCUSSION

1. Whether Mr. Zouaoui Should be Disqualified from Representing the Tenants

With regard to Tenant Mahmoud’s first request, the Commission’s rules provide that “any individual who is found by the Commission, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or

unprofessional conduct” may be disqualified, temporarily or permanently, from appearing before the Commission in a representative capacity. 14 DCMR § 3812.5. However, where the Commission can grant no further relief to a party, an issue is moot and will not be decided by the Commission. *See, e.g., Am. Rental Mgmt. Co. v. Chaney*, RH-TP-08-29,302 (RHC Sept. 2, 2014) (Order on Motion to Withdraw as Counsel); *Tenants of 4021 9th St., N.W. v. E&J Props., LLC*, HP 20,812 (RHC June 11, 2014) (where Commission lacked jurisdiction over non-final order, proper formation of tenant association was moot); *Knight-Bey v. Henderson*, RH-TP-07-28,888 (RHC Jan. 8, 2013) (where tenant/petitioner fails to appear at hearing, failure to afford due process through proper notice of hearing to housing provider/respondent is moot); *see also Nelson v. B.F. Saul Prop. Co.*, RH-TP-10-29,994 (RHC Aug. 16, 2012) (parties lack standing to appeal where they neither “suffered [nor] will sustain some actual or threatened ‘injury in fact’” from a final order) (quoting *Maloff v. D.C. Bd. of Elections & Ethics*, 1 A.3d 383, 391 (D.C. 2010)).

The Commission’s regulations provide that “[d]ecisions of the Commission shall become final when issued; provided, that if a motion for reconsideration is filed, the decision shall become final when the motion is disposed of pursuant to § 3823.” 14 DCMR § 3821.6. In these consolidated cases, the Commission has issued its final decision and disposed of the only motion for reconsideration that was filed. *See* Decision and Order; Order on Motion for Reconsideration. Because the Decision and Order is now final, the Commission is satisfied that there is no further relief that it can grant in this matter. *See* 14 DCMR § 3821.6; *Chaney*, RH-TP-08-29,302 (Order on Motion to Withdraw as Counsel); *E&J Props., LLC*, HP 20,812. Moreover, the Commission is unable to identify any actual or threatened injury to the Tenants that could be remedied by disqualifying Mr. Zouaoui from representation at this point in the

litigation of the Tenant Petitions, because the issues on appeal before the Commission have been decided. *See Nelson*, RH-TP-10-29,994.

The Commission further observes that its jurisdiction is to decide appeals from decisions of the Rent Administrator and OAH in cases arising under the Act. *See* D.C. OFFICIAL CODE § 2-1831.16(b) (“The [Commission] shall have jurisdiction to review orders of the [OAH] in all adjudicated cases brought pursuant to [the Act.]”), D.C. OFFICIAL CODE § 42-3502.02(a)(2); *Bower v. Chastleton Assocs.*, TP 27,838 (RHC Mar. 27, 2014); *Gelman Mgmt. Co. v. Campbell*, RH-TP-09-29,715 (RHC Dec. 23, 2013). The Commission’s jurisdiction is limited to “those complaints and petitions arising under subchapters II, IV, V, VI, and IX of [the Act] . . . which may be disposed of through administrative proceedings.” D.C. OFFICIAL CODE § 42-3502.04(c). The Commission is satisfied that, because the unprofessional conduct alleged by Tenant Mahmoud relates to his representation of the Tenants under TOPA and not under the Act,² the Commission lacks jurisdiction to disqualify or otherwise sanction Mr. Zouaoui for the conduct described. *See* D.C. OFFICIAL CODE §§ 42-3502.02(a)(2), 42-3502.04(c); *Bower*, TP 27,838; *Campbell*, RH-TP-09-29,715.

2. Whether the Commission should refer Mr. Zouaoui to Bar Counsel

With regard to Tenant Mahmoud’s second request, that the Commission refer Mr. Zououi for discipline under D.C. Bar R. XI, the Commission observes again that the allegedly unprofessional conduct set forth in the Motion for Service and Referral relates to matters outside the Commission’s jurisdiction. *See* Motion for Service and Referral at 1-6. Further, the Office

² The Commission notes that it does not decide whether Mr. Zouaoui’s conduct in failing to obtain an order granting withdrawal as counsel while his client(s) filed motions *pro se* was proper under either the Commission’s rules or the D.C. Rules of Professional Conduct. Nonetheless, as noted *supra*, the Commission is satisfied that addressing the issue at this point would not provide any relief to the Tenants of any actual injury.

of Bar Counsel notes that “[s]upporting documents, such as copies of a retainer agreement, proof of payment, correspondence between you and your attorney, the case name and number if a specific case is involved, and copies of papers filed in connection with the case, may be useful to our investigation.” D.C. Bar, “File a Complaint,” <http://www.dcbar.org/attorney-discipline/for-the-public/file-an-attorney-complaint.cfm> (accessed Jan. 21, 2015).

Based on its review of Tenant Mahmoud’s motion and the numerous documents attached as exhibits, the Commission is satisfied that, because the alleged conduct did not relate to matters within the Commission’s jurisdiction, the Commission cannot make a useful referral to the Office of Bar Counsel relating to Mr. Zouaoui’s conduct. Accordingly, the Commission, in its discretion, declines to refer this matter and advises Tenant Mahmoud to contact the Office of Bar Counsel directly through the website noted or by mail at:

Office of Bar Counsel
Board on Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

3. Whether Tenant Mahmoud Should be Served with All Further Documents in These Cases

Finally, with regard to Tenant Mahmoud’s third request, that the Commission order the Clerk of the Court and all parties to serve him individually with all documents in these consolidated cases, the Commission observes that its rules provide that “[w]hen a party has a representative of record as provided in § 3812, service shall be made upon the representative.” 14 DCMR § 3803.2. Although the Tenants have been consistently represented by the Association in this matter, *see* Decision and Order at 59-63, the Commission, as a courtesy in light of the late stage of this appeal and unclear status of the Tenants’ representation, previously

directed that service was to be made upon Tenant Chaney, the president of the Association, and several purported members of the board of the Association as well. *See* Notice of Ex Parte Communication (RHC Sept. 30, 2014) at 5.

As noted, the Commission's Decision and Order and Order on Reconsideration have disposed of this appeal. *See* 14 DCMR § 3821.6. Additionally, unlike the other Tenants on whom the Commission has directed service, Tenant Mahmoud does not claim any official capacity with the Association. *See generally* Motion for Service and Referral; *cf.* 14 DCMR §§ 3812.1(a) ("In any proceeding . . . [a]n individual . . . may appear in his or her own behalf[.]"), 3812.1(d) ("A member selected by the members of an association [or] a group of tenants may represent the association"). The Commission is satisfied that, because it has disposed of the appeal in these consolidated cases, Tenant Mahmoud cannot now enter an appearance before the Commission on his own behalf. *Cf.* 14 DCMR § 3812.6 ("Any individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating . . . for whom the appearance is made."). Accordingly, the Commission will not order that Tenant Mahmoud be served with any further matters. As a courtesy, the Commission will direct the Clerk of the Court to mail a copy of the Decision and Order and of the Order on Reconsideration to Tenant Mahmoud.

III. CONCLUSION

For the foregoing reasons, the Commission denies the Motion for Service and Referral.

SO ORDERED



CLAUDIA L. MCKOIN, COMMISSIONER

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
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER** in RH-TP-06-28,366 and RH-TP-06-28,577 was mailed, postage prepaid, by first class U.S. mail on this **23rd day of January, 2015**, to:

Jamil Zouaoui, Esq.
4626 Wisconsin Ave., NW
Suite 300
Washington, DC 20016

Arlena Chaney
301 G Street, SW, #426
Washington, DC 20024

New Capitol Park Towers Tenants Association
c/o:

John Bou-Sliman
301 G Street, SW, #613
Washington, DC 20024

William C. Horn
301 G Street, SW, #822
Washington, DC 20024

Yisehac Yohannes
301 G Street, SW, #219
Washington, DC 20024

Awad Mahmoud
301 G Street, SW, #622
Washington, DC 20024

Richard W. Luchs, Esq.
Debra F. Leege, Esq.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, NW
Suite 900
Washington, DC 20036


LaTonya Miles
Clerk of the Court
(202) 442-8949