

**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 NOTICE OF REPRESENTATION**

February 10, 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).<sup>1</sup> 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), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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<sup>1</sup> 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 July 1, 2005, and March 27, 2006, respectively, Tenant/Appellee/Cross-appellant Arlena Chaney (Tenant Chaney), residing at 301 G St., S.W., (Housing Accommodation), Unit 426, filed tenant petition RH-TP-06-28,366, on her own behalf, and tenant petition RH-TP-06-28,577, on behalf of the New Capitol Park Towers Tenant Association (Association)<sup>2</sup> (collectively, Tenant Petitions), against Housing Provider/Appellant/Cross-appellee American Rental Management Company (Housing Provider).

On December 12, 2014, the Commission issued a decision and order in the appeal of the Tenant Petitions: Am. Rental Mgmt. Co. v. Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (RHC Dec. 12, 2014) (Decision and Order). In its Decision and Order, the Commission affirmed the determination of Administrative Law Judge Wanda Tucker (ALJ) that the Association represents sixty-seven (67) individual Tenants, including Tenant Chaney, with regard to petition RH-TP-06-28,577. *See* Decision and Order at 43-50, 59-53. On January 20, 2015, the Commission issued an order denying a motion for reconsideration filed by Tenant Chaney. *See Am. Rental Mgmt. Co. v. Chaney*, RH-TP-06-28,366 & RH-TP-06-28,577 (RHC Jan. 20, 2014) (Order on Reconsideration).

On January 29, 2015, Awad Mahmoud (Tenant Mahmoud) and Gerardus Schavemaker, residents of Units 622 and 736, respectively, of the Housing Accommodation, filed a document (Notice of Representation) stating that Tenant Chaney is authorized to represent them in this matter. *See* 14 DCMR § 3812.1(d) (“In any proceeding, [a] member selected by the members of an association . . . or a group of tenants . . . may represent the association [or] group”); *id.*

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<sup>2</sup> The Commission refers to Tenant Chaney and the individuals represented by the Association collectively as the “Tenants.”

§ 3812.3 (“Any person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.”).

## II. DISCUSSION

### 1. **Standing**

As an initial matter, the Commission denies Mr. Schavemaker’s request to be represented by Tenant Chaney in this matter because the Commission determines that Mr. Schavemaker does not have standing in the appeal of this case. Dorchester House Tenants Ass’n v. Dorchester House Assoc. Ltd. P’ship, CI 20,758 (RHC May 30, 2003) (“[o]nly the persons who appeared as parties below have standing to appeal”); *see also* 1 DCMR § 2924.1 (effective Jul. 14, 2006) (“Individual tenants involved in any proceeding shall be individually identified.”); Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm’n, 642 A.2d 1282, 1288 (D.C. 1994) (where no tenant association was formed and only one tenant filed appeal, other tenants lacked standing before DCCA); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (where ALJ’s determination of identity and number of tenants represented by tenant association was unsupported by substantial evidence, only tenants who appeared and testified had standing on appeal).

Although one of the issues raised on appeal to the Commission was the number of Tenants represented by the Association, *see* Decision and Order at 43-50, the Commission’s review of the record shows that the Association never asserted before OAH that Mr. Schavemaker was a member of or represented by the Association in this case, nor did Mr. Schavemaker appear on his own behalf. *See* R. at 304-07 (March 2 Roster); *see* R. at 331

(repeated)<sup>3</sup> -34 (April 19 Roster); *see* R. at 329-30 (repeated) (April 19 Petition List); R. at 322 - 28 (repeated) (Collected Signatures); R. at 421-23 (October 2 Roster); R. at 418-20 (October 2 Petition List); R. at 442-44 (October 15 Roster); R. at 439-41 (October 15 Petition List).

Because Mr. Schavemaker did not appear personally or through a representative before OAH when this case was heard, the Commission determines that he is not and cannot be a party to the case on appeal before the Commission. 1 DCMR § 2924.1; Lenkin Co., 642 A.2d at 1288; Dorchester House, CI 20,758; Borger Mgmt., RH-TP-06-28,854; *see also* 14 DCMR § 3802.1 (appeal may be filed only by a “party aggrieved by a final decision of the Rent Administrator” or OAH).

## **2. Representation in Cases Already Decided**

Regarding Tenant Mahmoud, the Commission notes his authorization of Tenant Chaney to appear as a representative on his behalf pursuant to 14 DCMR § 3812.1(d). The Commission further notes, however, that Tenant Chaney previously 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, despite an earlier representation, received by letter on September 19, 2014, by several Tenants that Tenant Chaney is not authorized to represent the Association. *See* Order on Reconsideration at 4-5 n.2. Moreover, the Commission has never granted leave to withdraw as counsel to the Tenants’ attorney (by way of the Association), Jamil Zouaoui, Esq., because he has never filed a motion to do so that complies with the Commission’s rules. *See* Order on Motion to Withdraw as Counsel (RHC Sept. 2, 2014); 14 DCMR § 3813.

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<sup>3</sup> The Commission notes that the record contains an error in page numbering. After page 333, the numbering restarts at “324,” and all subsequent pages in the record are numbered sequentially based on that mistake. As needed for clarity, the Commission will refer to pages as “repeated” if the relevant page is the second use of that number.

The Commission has repeatedly determined in this case that it does not currently need to resolve the issue of the Tenants' representation because the underlying merits of the case have been resolved. Order on Reconsideration at 4-5 n.2; Order on Motion for Service of Documents and Referral of Counsel to the Bar (RHC Jan. 23, 2015).<sup>4</sup> Specifically, the Act authorizes the Commission to "decide appeals brought to it from decisions of the Rent Administrator," or from OAH. D.C. OFFICIAL CODE §§ 42-3502.02(a)(2); *see id.* § 2-1831.16(b) (2012 Repl.) (OAH Establishment Act). However, the Act and the Commission's rules do not authorize the Commission to undertake any additional review of the merits of a decision by OAH after the Commission has issued a decision or after it has granted or denied a motion for reconsideration, and any further relief is only available in the courts of the District of Columbia. *See* D.C. OFFICIAL CODE § 42-3502.18 ("any affected housing provider or tenant may commence a civil action in the Superior Court of the District of Columbia to enforce any rule or decision issued under [the Act]"); *id.* § 42-3502.19 ("Any person or class of persons aggrieved by a final decision of the [Commission] . . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals [(DCCA)]"); 14 DCMR § 3821.6 ("Decisions 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.").

The Commission is satisfied that the Decision and Order and Order on Reconsideration are final, that the proceedings on the appeal are completed, and that the parties' administrative

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<sup>4</sup> Consistent with the determination that it need not address the appearance of representatives, the Commission has ordered that service of documents in this case should be made upon each individual who claimed, prior to the Commission's resolution of the case in the Final Order and Order on Reconsideration, to be a representative of the Association. *See* Notice of Ex Parte Communication (RHC Sept. 30, 2014) at 5; 14 DMCR § 3803.2 ("When a party has a representative of record as provided in § 3812, service shall be made upon the representative.").

remedies before the Commission have been exhausted. *See* 14 DCMR § 3821.6; *see also* Joyce v. D.C. Rental Hous. Comm’n, 741 A.2d 24 (D.C. 1999) (requirement to exhaust administrative process before filing appeal to DCCA). Therefore, the Commission determines that, at this time, no further relief to the Tenants would follow from any action regarding the appearance of representatives on behalf of the Tenants or the Association. *See* 14 DCMR § 3812.1(d); Tenants of 4021 9th St., N.W. v. E&J Props., LLC, HP 20,812 (RHC June 11, 2014) (Order on Motion to Dismiss) (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); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Jan. 29, 2012) (where case remanded to determine remedy for violation of registration provision of the Act, issue of notice to tenant of reduction in services was moot on appeal); Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005) (dismissing issue as moot where there was no further relief the Commission could grant).<sup>5</sup>

The Commission’s rules provide that “[a]ny person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.” 14 DCMR § 3812.3. The Commission has discretion as an administrative tribunal to make procedural determinations in order to carry out its mandate. *See*

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<sup>5</sup> The Commission observes that the Notice of Representation states that it is also filed in relation to a separate case numbered RH-TP-08-29,302. The Commission dismissed the appeal in that matter several months prior to the date of this filing. *See* Am. Rental Mgmt. Co. v. Chaney, RH-TP-08-29,302 (RHC May 8, 2014) (Order Dismissing Appeal). Moreover, the Commission has previously determined, as the Notice of Representation appears to acknowledge, that matters related to representation of the Tenants before the Commission in that case are moot. *See* Am. Rental Mgmt. Co. v. Chaney, RH-TP-08-29,302 (RHC Sept. 2, 2014) (Order on Motion to Withdraw as Counsel); *see also* BLACK’S LAW DICTIONARY at 1029-30 (8th ed. 2004) (moot, “Having no practical significance; hypothetical or academic[;]” mootness doctrine, “The principle that American courts will not decide moot cases – that is, cases in which there is no longer any actual controversy”).

Prime v. D.C. Dept. of Public Works, 955 A.2d 178, 182 (D.C. 2008) (citing Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977) (administrative tribunals “must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.”); Nader v. FCC, 520 F.2d 182, 195 (D.C. Cir. 1975) (“the [Federal Communications] Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”); FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (agencies “should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.”)). If any future motion or additional proceeding before the Commission in this case, such as a remand following an appeal to the DCCA, has the potential to affect any party’s rights under the Act, the Commission will, at that time, issue an order to establish authority to appear. *See* 14 DCMR § 3812.3.

### **III. CONCLUSION**

Accordingly, the Commission dismisses Notice of Representation as to Mr. Schavemaker and takes no action on the Notice of Representation as to Tenant Mahmoud.

**SO ORDERED**



CLAUDIA L. MCKOIN, COMMISSIONER

### **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 **10th day of February, 2015**, to:

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