

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 FAILURE OF SERVICE

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).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), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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 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)² (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).

Also on January 20, 2015, Awad Mahmoud (Tenant Mahmoud), residing in Unit 622 of the Housing Accommodation, filed a motion (Motion for Service and Referral) requesting the Commission to disqualify the Tenants' counsel of record, Jamil Zouaoui, Esq., to refer Mr. Zouaoui to the D.C. Bar for disciplinary action, and to serve Tenant Mahmoud with all matters going forward. Motion for Service and Referral at 7. The Commission promptly denied the

² The Commission refers to Tenant Chaney and the individuals represented by the Association collectively as the "Tenants."

Motion for Service and Referral for lack of jurisdiction, because the complain-of conduct by Mr. Zouaoui related to matters not before the Commission, and as moot, because the proceedings on the merits of this case have been concluded. Order on Motion for Service and Referral (RHC Jan. 23, 2015) at 3-7.

On January 26, 2015, Mr. Zouaoui, apparently having not yet received the Order on Motion for Service and Referral by mail, filed an opposition to Tenant Mahmoud's motion (Opposition). *See* 14 DCMR § 3814.3 ("Any party may file a response in opposition to a motion within five (5) [business] days after service of the motion.").³ On January 29, 2015, however, the Commission received the instant notice from Tenant Mahmoud (Notice of Failure of Service), stating that Mr. Zouaoui had served his Opposition on Tenant Chaney at the wrong address.⁴ *See* Notice of Failure of Service at 1.

II. DISCUSSION

In the Notice of Failure of Service, Tenant Mahmoud asks the Commission "to require Mr. Zouaoui to follow the required court rules and properly serve all parties, in this case, now and in the future." *Id.* The Commission's rules provide that:

All pleadings and other documents shall be served on the opposing party or parties prior to or at the same time as filed with the Commission and shall contain proof of service[.]

14 DCMR § 3801.8. The Commission's rules further provide, however, that:

Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.

³ The Commission is satisfied that no harm was done and no right of Mr. Zouaoui's was prejudiced by the its decision to deny the Motion for Service and Referral before the expiration of his time to file an opposition.

⁴ The Commission previously ordered that, although Mr. Zouaoui remains the attorney of record for the Tenants, all filings in this case should additionally be served upon Tenant Chaney. *See* Notice of Ex Parte Communication (RHC Sept. 30, 2014).

14 DCMR § 3803.4. Tenant Mahmoud's Notice of Failure of Service states that he "contacted Ms. Chaney about service on [the Opposition] to which she stated she was not [sic]." Notice of Failure of Service at 1.

Moreover, the Commission cannot determine what relief, if any, it could grant to the Tenants based on Mr. Zouaoui's misaddressed mailing. *See* Tenants of 4021 9th St., N.W. v. E&J Props., LLC, HP 20,812 (RHC June 11, 2014) (Order on Motion to Dismiss); Knight-Bey v. Henderson, RH-TP-07-28,888 (RHC Jan. 8, 2013); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Jan. 29, 2012); Oxford House-Bellevue v. Asher, TP 27,583 (RHC May 4, 2005); *see also* Smith v. Workman, 99 A.2d 712, 713 (D.C. 1953) ("if, pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief, or makes a decision unnecessary, the question becomes moot and the appeal will be dismissed.") Bourn v. Anthony, TP 28,242 (RHC Nov. 18, 2005) (Order on Motion for Expeditious Ruling) (motion to expedite moot where Commission dismissed all appeals prior to deciding motion); Norwood v. Peters, TP 27,678 (RHC Feb. 3, 2005).

Tenant Mahmoud asks the Commission to "require" Mr. Zouaoui to comply with the Commission's procedural rules, which Mr. Zouaoui, of course, is already required to do. Notice of Failure of Service at 1; *see* 14 DCMR § 3801.8. Interpreting, for the sake of argument, the Notice of Failure of Service as a motion to strike the Opposition, the Commission is satisfied that such corrective action would be unnecessary because the Motion for Service and Referral was denied prior to the filing of and without any reliance on the Opposition. *See* Order on Motion for Service and Referral at 7; Workman, 99 A.2d at 713; Bourn, TP 28,242; Noorwood, TP 27,678.

Therefore, the Commission declines to act on the Notice of Failure of Service as it is unnecessary and moot.

III. FUTURE SERVICE OF FILINGS

The Commission previously ordered that John Bou-Sliman (Tenant Bou-Sliman), a party to this case based on his residency in Unit 613 of the Housing Accommodation, among other Tenants who have stated they are members of the board of the Association, was to be served with all filings and orders in this case. *See* Notice of Ex Parte Communication (RHC Sept. 30, 2014).⁵ Tenant Mahmoud states in his Notice of Failure of Service that Tenant Bou-Sliman has moved out of the Housing Accommodation, effective October 2014. Notice of Failure of Service at 1. On December 12, 2014, and January 20, 2015, respectively, The Commission attempted to serve Tenant Bou-Sliman with the Final Order and Order on Reconsideration. The Commission later received notices of undeliverable mail from this attempted service on Tenant Bou-Sliman at his address of record in the Housing Accommodation.⁶

The Commission notes that “[i]t is incumbent upon a party to provide the Commission with notice of a change of address.” Hardy v. Sigalas, RH-TP-09-29,503 (RHC Aug. 7, 2014) (Order on Motion for Reconsideration); Brookens v. Hagner Mgmt. Corp., TP 3788 (RHC July 2, 2002) at 5 n.5. The Commission is satisfied that the undeliverable mail returned to the Commission corroborates Tenant Mahmoud’s assertion that Tenant Bou-Sliman no longer

⁵ The Commission has discretion as an administrative tribunal to make procedural determinations in order to carry out its mandate. *See 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.”)).

⁶ Tenant Mahmoud asserts that Tenant Bou-Sliman has moved to Paris, France. *See* Notice of Failure of Service at 1. The mail returned to the Commission reflects an attempt by the U.S. Postal Service to forward Tenant Bou-Sliman’s mail to an address in Alexandria, VA, which failed. The Commission did not receive the undeliverable mail until January 26, 2015.

resides in the Housing Accommodation. Accordingly, because the Commission has not been provided a new address at which to contact Tenant Bou-Sliman, the Commission modifies its prior order on the service of documents: Tenant Bou-Sliman need not be served with any filings or orders.⁷

The Commission notes, finally, that its rules provide that, “[w]hen a party has a representative of record as provided in § 3812, service [of documents] shall be made upon the representative.” 14 DCMR § 3803.2. Accordingly, the Commission reminds those Tenants who have claimed a representative role for the Association, and Mr. Zouaoui, as counsel of record, that they are responsible for informing the represented Tenants of all developments in this case.

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

⁷ The Commission once again notes that any further appeal of the merits of this case must be taken to the District of Columbia Court of Appeals (DCCA). D.C. OFFICIAL CODE § 42-3502.19 (“Any person or class of persons aggrieved by a final decision of the Rental Housing Commission . . . may seek judicial review of the decision . . . by filing a petition for review in the [DCCA].”). Alternatively, the Tenants, having been awarded rent refunds based on their Tenant Petition, *see* Decision and Order at 20, may enforce their awards in the Superior Court of the District of Columbia (Superior Court). *See* D.C. OFFICIAL CODE § 42-3502.18 (“any affected housing provider or tenant may commence a civil action in the [Superior Court] to enforce any rule or decision issued under [the Act]”).

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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New Capitol Park Towers Tenants Association, c/o:

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