

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-06-28,524

In re: 3133 Connecticut Ave., N.W.

Ward Three (3)

ANDREW REAMER, *et al.*
Tenants/Appellants

v.

B.F. SAUL COMPANY
Housing Provider/Appellee

ORDER ON MOTIONS FOR VOLUNTARY DISMISSAL

March 26, 2015

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Housing Regulation Administration (HRA) of the District of Columbia Department of Department of Consumer and Regulatory Affairs (DCRA).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), 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 the DCRA, Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to Department of Housing and Community Development (DHCD) by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

**I. BLAKE AND WENDY NELSON'S MOTION FOR VOLUNTARY
DISMISSAL**

On February 22, 2012, Blake Nelson and Wendy Nelson (“the Nelsons”) filed a notice of appeal (Nelsons’ Notice of Appeal) with the Commission. On July 2, 2013, the Nelsons filed a document in the Commission with the title “Tenant/Petitioner Motion for Voluntary Dismissal” (Nelsons’ Motion). No opposition to the Nelsons’ Motion was filed by any other party to this case. The Nelsons’ Motion states:

The Kennedy Warren Residents Association (KWRA) filed the above-referenced tenant petition; and Tenants [Blake and Wendy Nelson] were members of the KWRA when the [T]enant [P]etition was filed. Tenants [Blake and Wendy Nelson], however, did not file the tenant petition or participate in order to protect their rights in other proceedings, as Housing Provider has repeatedly used rulings in other proceedings in an effort to claim that issues not actually litigated by parties in interest had been “decided” by an unrelated tenant petition (for example, Housing Provider has attempted to introduce/reference extra-record material in the appeal of TP 28,519 regarding other tenant petitions, to which Tenants [Blake and Wendy Nelson] were not parties).

Tenants [Blake and Wendy Nelson], therefore, are requesting that this motion to withdraw their appeal, without prejudice be granted.

Nelsons’ Motion at 1-2.

The Commission’s regulations provide that a party “may file a motion to withdraw an appeal pending before the Commission.” 14 DCMR § 3824.1 (2004).² Upon receiving a motion to withdraw appeal, “[t]he Commission must “review [the] motion[] to withdraw to ensure that the interests of all parties are protected.” 14 DCMR § 3824.2; see Lanier Assocs. v. Tenants of 1773 Lanier Place, HP 20,880 (RHC Mar. 5, 2014) (quoting 14 DCMR § 3824.2).

² The Commission in its discretion interprets the Nelsons’ Motion as a motion to withdraw appeal under 14 DCMR § 3824.1. *See, e.g. Prime v. D.C. Dep’t of Pub. Works*, 955 A.2d 178, 182 (D.C. 2008) (quoting Ammerman v. D.C. Rental Accommodations Comm’n, 375 A.2d 1060, 1063 (D.C. 1977)) (explaining that administrative tribunals are given discretion in procedural decisions); Johnson v. MPM Mgmt., Inc., RH-TP-09-27,294 (RHC Oct. 1, 2012) (interpreting consent motions to dismiss filed by both parties as the equivalent to a stipulation of dismissal).

First, in considering the interests of the Nelsons, the Commission notes that the Nelsons assert they neither joined in the instant tenant petition nor participated in the proceedings below. *See* Nelsons' Motion at 1. The Commission has held that "[o]nly the persons who appeared as parties below have standing to appeal." Dorchester House Tenants Ass'n v. Dorchester House Assoc. Ltd. P'ship, CI 20,758 (RHC May 30, 2003); *see, e.g.,* Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (where the ALJ's findings concerning the identity and number of tenants represented by the tenant association was not supported by substantial evidence; only tenants who appeared and testified had standing on appeal). Therefore, the Commission observes on the basis of its precedent that, having failed to participate in the proceedings below, the Nelsons lack standing to file an appeal in this case to the Commission, *see, Borger Mgmt.*, RH-TP-06-28,854, and that the Nelsons' interests will be not harmed in allowing the Nelsons' Notice of Appeal to be withdrawn. 14 DCMR § 3824.1; Dorchester House Tenants Ass'n, CI 20,758; Lanier Assocs., HP 20,880; *see, e.g., Borger Mgmt.*, RH-TP-06-28,854.

Regarding the interest of the remaining tenants who are parties to the case, the Commission notes that a separate appeal was filed on February 23, 2012 by several of the tenants in this case.³ *See infra* at 4. The Nelsons were not a party to that appeal; therefore, the Commission notes that the Nelsons' Motion does not affect the rights of the parties to the appeal filed on February 23, 2012. Moreover, insofar as none of the tenants who are parties to this case have filed an opposition to the Nelsons' Motion, the Commission is satisfied that the interests of the remaining tenants who are parties to the case will be not harmed in allowing the Nelsons' Notice of Appeal to be withdrawn. 14 DCMR § 3824.1; Lanier Assocs., HP 20,880.

³ The February 23, 2012 appeal was filed by Andrew Reamer, Suzanne Crawford, Christine Burkhardt, Lloyd Siegel, Ken Mazzer, and Don Wassem.

Finally, regarding the interests of the Housing Provider, B.F. Saul Company (Housing Provider), the Commission notes that the Nelsons' Motion does not include language regarding whether the Housing Provider consents to withdrawal of the appeal. *See* Motion at 1-2. The Commission's review of the record, however, reveals that no opposition was filed by the Housing Provider. The Commission is therefore satisfied that there is sufficient evidence in the record to indicate that the interests of the Housing Provider will be not harmed in allowing the Nelsons' Notice of Appeal to be withdrawn. 14 DCMR § 3824.1; Lanier Assocs., HP 20,880.

Accordingly, the Nelsons' Motion is granted, and the Nelsons' Notice of Appeal is dismissed, without prejudice. 14 DCMR § 3824.1; Lanier Assocs., HP 20,880.

II. ANDREW REAMER'S MOTION FOR VOLUNTARY DISMISSAL

On February 23, 2012, Andrew Reamer, Suzanne B. Crawford, Christine Burkhardt, Lloyd Siegel, Ken Mazzer, and Don Wassem filed a notice of appeal with the Commission.⁴ Subsequently, on September 24, 2012, Andrew Reamer filed a document in the Commission with the title, "Tenant/Petitioner Motion for Voluntary Dismissal" (Mr. Reamer's Motion). Mr. Reamer's Motion states:

Pursuant to Rule [1 DCMR §] 2817.1,⁵ Tenant/Petitioner Andrew Reamer moves for voluntary dismissal with prejudice of his claims asserted in this tenant petition in the above-styled proceeding. Mr. Reamer has settled any and all claims in this matter with the Housing Provider/Respondent B.R. Saul Company. Mr. Reamer

⁴ The Commission notes that the ALJ found that Christine Burkhardt, Ken Mazzer, and Don Wassem did not meet the criteria to be considered tenants/petitioners in this matter. Reamer v. B.F. Saul Co., RH-TP-06-28,524 (RHC Feb. 3, 2012) at 5-6.

⁵ OAH Rule 1 DCMR § 2817.1 states as follows:

A petitioner may file a summary motion for voluntary dismissal of any action, or of any claim asserted in an action, at any time, either before or after a respondent has answered a Notice of Infraction or Notice of Violation, or has otherwise appeared in an action, and the presiding Administrative Law Judge may grant a summary motion for voluntary dismissal without awaiting a response from the respondent.

has obtained the consent of the Housing Provider/Respondent with respect to the requested relief.

Mr. Reamer's Motion at 1.⁶

As stated previously, *see supra* at 2, the Commission will review a motion to withdraw an appeal to ensure that the interests of all parties are protected. 14 DCMR § 3824.1; Lanier Assocs., HP 20,880 (quoting 14 DCMR § 3824.2).

In considering the interests of Mr. Reamer, the Commission notes that Mr. Reamer states that he settled all claims related to this appeal with the Housing Provider. Mr. Reamer's Motion at 1. Additionally, Mr. Reamer's Motion was submitted on his behalf by his counsel. *Id.*

Regarding the interest of the remaining persons who joined in the February 23, 2012 Notice of Appeal, *see supra* at 4 and n.4, the Commission notes that Suzanne B. Crawford, Christine Burkhardt, Lloyd Siegel, Ken Mazzer, and Don Wassem did not join Mr. Reamer's Motion. The Commission therefore notes that the issues raised in the February 23, 2012 Notice of Appeal remain pending with respect to all signatories except for Mr. Reamer.

Finally, regarding the interests of the Housing Provider, the Commission notes Mr. Reamer's Motion states that Housing Provider consents to the withdrawal of the appeal. *See* Motion at 1. Therefore, the Commission is satisfied that the interests of all the parties are protected by the granting of Mr. Reamer's Motion. 14 DCMR § 3824.1; Lanier Assocs., HP 20,880.

Accordingly, Mr. Reamer's Motion is granted, and the February 23, 2012 Notice of Appeal is dismissed *with prejudice* with respect to Mr. Reamer only. In light of the Commission's determination of this Motion, the Commission in its discretion will amend the

⁶ The Commission in its discretion interprets Mr. Reamer's Motion as a motion to withdraw under 14 DCMR § 3824.1. Prime, 955 A.2d at 182; Johnson, RH-TP-09-27,294; *see also supra* at n.2.

case caption of this appeal for all subsequent pleadings and orders as follows: Lloyd Seigel, et al.
v. B.F. Saul Company, et al. See 14 DCMR § 3809.1-.2.⁷

SO ORDERED


PETER B. SZEGEDY-MASZAK, 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

⁷ 14 DCMR § 3809.1 provides the following: "The Commission shall continue the caption of the case as determined by the Rent Administrator [or ALJ] in accordance with § 3905, but shall designate the appellant and the appellee."

14 DCMR § 3809.2 provides the following, in relevant part: "In the event of the death, dissolution, reorganization, or change of ownership or interest of a party, the Commission may, upon its own motion . . . substitute or add a person, partnership or corporation."

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER** in RH-TP-06-28,524 was served by first-class mail, postage prepaid, this **26th day of March, 2015**, to:

Copies to:

Blake and Wendy Nelson
509 Raeburn Lane
Farragut, TN 37934

Suzanne B. Crawford
3133 Connecticut Ave., NW, Apt. 805
Washington, DC 20008

Christine Burkhardt
3133 Connecticut Ave., NW, Apt. 901
Washington, DC 20008

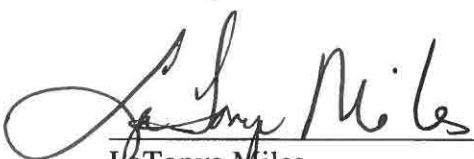
Lloyd Siegel
3133 Connecticut Ave., NW, Apt. 502
Washington, DC 20008

Ken Mazzer
3133 Connecticut Ave., NW, Apt. 115
Washington, DC 20008

Don Wassem, c/o Ken Mazzer
3133 Connecticut Ave., NW, Apt. 115
Washington, DC 20008

Carol Blumenthal
1700 17th Street, N.W.
Suite 301
Washington, D.C. 20009

Richard W. Luchs
Joshua M. Greenberg
Greenstein, DeLorme, & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036



LaTonya Miles
Clerk of Court
(202) 442-8949