

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-28,985

In re: 6000 13th Street, NW

Ward Four (4)

SHEWAFERAHU KURATU
Tenant/Appellant

v.

AHMED, INC.
Housing Provider/Appellee

ORDER DISMISSING APPEAL

February 18, 2014

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),¹ based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD). 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 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2920-2941, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ The Office of Administrative Hearings (OAH) assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of RACD were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)).

I. PROCEDURAL HISTORY²

On June 14, 2007, Tenant/Appellant Shewaferahu Kuratu (Tenant), a resident of 6000 13th Street, NW, Unit 301 (Housing Accommodation) filed Tenant Petition RH-TP-07-28,985 (Tenant Petition) with DCRA. Tenant Petition at 3-5; Record (R.) at 11-13. Administrative Law Judge (ALJ) Wanda Tucker issued a Final Order on February 19, 2010. *See Kuratu v. Ahmed, Inc.*, RH-TP-07-28,985 (OAH Feb. 19, 2010) at 1; R. at 220.

On April 21, 2010, Tenant filed a Notice of Appeal with the Commission. On December 27, 2012, the Commission entered its Decision and Order, remanding the case to OAH for further consideration. *See Kuratu*, RH-TP-07-28,985 (RHC Dec. 27, 2012) (Decision and Order). The ALJ issued a final order after remand on December 20, 2013. *Kuratu*, RH-TP-07-28,985 (OAH Dec. 20, 2013) (Final Order After Remand); R. at 677.

On January 13, 2014 the Commission received two documents from the Tenant, by counsel: (1) “Tenant’s Notice of Appeal” (Notice of Appeal after Remand); and (2) “Tenant/Appellant’s Motion for Leave to File Notice of Appeal Out of Time” (Motion to File Appeal Out of Time). The Housing Provider/Appellee Ahmed, Inc. (Housing Provider) did not file a response to either document.

III. DISCUSSION

In the Motion to File Appeal Out of Time, Tenant’s counsel (“Counsel”)³ states that the delay in filing the Notice of Appeal After Remand was due to “excusable neglect.” *See* Motion

² The factual background prior to the Tenant/Appellant’s Motion for Leave to File Notice of Appeal Out of Time is set forth in the Commission’s Decision and Order in *Kuratu v. Ahmed, Inc.*, RH-TP-07-28,985 (RHC Jan. 29, 2013). The Commission sets forth here only the facts relevant to the issues that arise from the instant Motion.

³ The Commission notes that the Tenant in this case is represented by law students and supervising attorneys from the University of the District of Columbia David A. Clarke School of Law (UDC Law School). Motion to File Appeal Out of Time at 4.

to File Appeal Out of Time at 1 (citing D.C. App. R. 4(a)(5); 1 DCMR § 2801.1).⁴ Specifically, Counsel states that they did not receive the Final Order After Remand until December 27, 2013; that supervising attorneys believed that the correct date to file the Notice of Appeal After Remand was January 13, 2014; that the clinic offices were closed for several days “between Christmas and New Years” for UDC Law School’s semester break; and that one of the supervising attorneys was not checking for incoming decisions during the semester break because he was busy grading exams.⁵ See Motion to File Appeal Out of Time at 3-4.

The Commission notes that its regulations provide the following regarding the time period for filing a notice of appeal:

3802.2 A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator [or ALJ] is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.

⁴ D.C. App. R. 4(a)(5) provides the following:

(5) Extension of Time.

(A) The Superior Court may extend the time for filing the notice of appeal if:

(i) a party files the notice of appeal no later than 30 days after the time prescribed by Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

(B) A request for extension of time made before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the request is made after the expiration of the prescribed time, it must be by motion and provide such notice to the other parties as the court deems appropriate.

1 DCMR § 2801.1 provides the following, in relevant part: “[w]here indicated, these Rules may incorporate by reference specified District of Columbia Superior Court Rules of Civil Procedure”

⁵ The Commission notes that the reasons given for the late filing of the Notice of Appeal, *see supra*, are in the nature of “good cause” or “excusable neglect.” Motion to File Appeal Out of Time at 3-4. However, as noted herein, the Commission has not adopted a “good cause” or excusable neglect” standard for the acceptance of a notice of appeal filed after the Commission’s mandatory and jurisdictional time period for filing an appeal under 14 DCMR §§ 3802.2, 3816.6. See, e.g. Dorchester House, Assocs., LLC v. Tenants of 2480 16th St., NW, RH-SF-09-20,098 (RHC Sept. 6, 2013); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Sept. 28, 2012); Haendel v. Budd, TP 27,598 (RHC May 21, 2007).

3816.3 When the time period described or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

3816.6 The Commission, for good cause shown, may enlarge the time period prescribed, either on motion by a party or on its own initiative; *provided, that the Commission does not enlarge the time for filing a notice of appeal.*

14 DCMR §§ 3802.2, 3816.3, 3816.6 (emphasis added). The Commission has consistently held that, under the Act, time limits are mandatory and jurisdictional. *See, e.g. Dorchester House, Assocs., LLC*, RH-SF-09-20,098 (dismissing a notice of appeal that was filed after the expiration of the ten day period under 14 DCMR § 3802.2); *Barnes-Mosaid*, RH-TP-08-29,316 (denying motion for reconsideration that was untimely filed); *Haendel*, TP 27,598 (dismissing appeal that was untimely filed).

The Commission observes that, in this case, the ALJ's Final Order After Remand was issued on December 20, 2013. Final Order After Remand at 1; R. at 677. The Final Order After Remand indicates that it was served on the Tenant by first-class mail. *See id.* at 17; R. at 661. Accordingly, the Commission determines that the Tenant had thirteen-days from the time the Final Order After Remand was issued to file their Notice of Appeal After Remand, a time period (accounting for applicable holidays and weekends) that expired on January 10, 2013, three (3) days prior to the actual filing of the Tenant's Notice of Appeal After Remand. 14 DCMR §§ 3802.2, 3816.1-.3, 3816.6.⁶ Therefore, because time limits are mandatory and jurisdictional, the

⁶ 14 DCMR § 3816.1 provides the following: "[i]n computing any period of time prescribed or allowed under this chapter, the day of the act, event, or default from which the designated time period begins to run shall not be included."

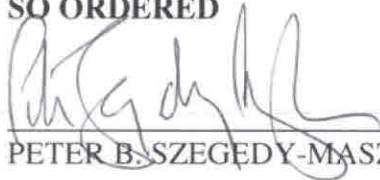
14 DCMR § 3816.2 provides the following: "[t]he last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday."

Commission dismisses the Tenant's untimely Notice of Appeal After Remand.⁷ 14 DCMR § 3802.2; Dorchester House, Assocs., LLC, RH-SF-09-20,098; Barnes-Mosaid, RH-TP-08-29,316; Haendel, TP 27,598.

IV. CONCLUSION

For the foregoing reasons, the Commission denies the Motion to File Appeal Out of Time, and dismisses the Notice of Appeal After Remand.

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."

⁷ The Commission notes that in the Tenant's Motion to File Appeal Out of Time, the Tenant cites the D.C. Court of Appeals (DCCA) rule governing an extension of time to file a notice of appeal before that Court (D.C. App. R. 4(a)(5)), as well as the OAH rule providing that the OAH regulations may incorporate by reference the D.C. Superior Court Rules of Civil Procedure (1 DCMR § 2801.1). *See* Motion to File Appeal Out of Time at 3. *See also supra* at p.3 n.4. While claiming D.C. App. R. 4(a)(5) and 1 DCMR § 2801.1 as the legal grounds supporting Tenant's Motion to File Appeal Out of Time, the Tenant fails to directly address and/or distinguish the Commission's regulation (and case precedent) which specifically provide that the Commission may not extend the time period for filing a notice of appeal, 14 DCMR § 3816.6. *See* Motion to File Appeal Out of Time at 1-4. The Tenant has thus failed to persuade the Commission that, despite Commission regulations and precedent to the contrary, the DCCA rule or the OAH regulation, as cited by the Tenant, is applicable hereunder. *Compare* D.C. App. R. 4(a)(5), 1 DCMR § 2801.1, *with* 14 DCMR § 3816.6.

JUDICIAL REVIEW

Pursuant to DC 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:

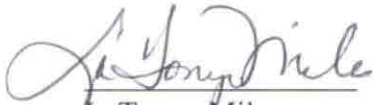
D.C. Court of Appeals
Office of the Clerk
430 E. Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL** in RH-TP-07-28,985 was mailed, postage prepaid, by first class U.S. mail on this **18th day of February, 2014** to:

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