

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,302

In re: 301 G Street, S.W.

Ward Six (6)

AMERICAN RENTAL MANAGEMENT COMPANY
Housing Provider/Appellant

v.

ARLENA CHANEY, et al.
Tenants/Appellees

ORDER ON MOTION FOR LEAVE TO LATE-FILE

October 20, 2015

McKOIN, COMMISSIONER. On October 5, 2015, Awad Mahmoud, Ingrid Swinton, and Gerardus Schavemaker (Tenants), on behalf of themselves and, ostensibly, one hundred and eighty-three (183) other tenants of the housing accommodation located at 301 G Street, N.W. (Housing Accommodation), filed a motion with the Commission titled "Petitioners' Leave to File Out of Time Motion for Reconsideration" (Motion for Leave to Late-file), regarding tenant petition RH-TP-08-29,302 (Tenant Petition). For following reasons, the Motion for Leave to Late-file is denied.

I. PROCEDURAL HISTORY

On May 16, 2008, Arlena Chaney, residing at 301 G Street, S.W. (Housing Accommodation), filed the Tenant Petition against American Rental Management Company (Housing Provider). Tenant Chaney named as additional petitioners the New Capitol Park Towers Tenant Association and seventy-eight (78) other individuals who she stated also resided at the Housing Accommodation.

On March 27, 2013, Administrative Law Judge Louis Burnet (ALJ) issued a final order, Chaney v. Am. Rental Mgmt. Co., RH-TP-08-29,302 (OAH Mar. 27, 2013) (Final Order), granting the petitioners reductions in rent ceilings, rent rollbacks, and rent refunds for reductions in related services and facilities. *See* Final Order at 120-24; Record (R.) at 1497-1501. On June 24, 2013, the ALJ issued an Order Granting Motion for Reconsideration (Reconsideration Order), correcting errors in the Final Order and thereby reducing the awards to the petitioners. *See* Reconsideration Order at 2; R. at 1756.

On July 9, 2013, the Housing Provider filed a Notice of Appeal with the Commission. *See* Notice of Appeal at 2. On April 1, 2014, the Housing Provider filed a motion to voluntarily withdraw its appeal (Motion to Dismiss Appeal). *See* Motion to Dismiss Appeal at 1. On May 8, 2014, the Commission granted the Housing Provider's Motion to Dismiss Appeal. *See* Am. Rental Mgmt. Co. v. Chaney, RH-TP-08-29,302 (RHC May 8, 2014) (Order Dismissing Appeal) at 1.

On May 15, 2014, Tenant Chaney, *pro se*, filed an "Emergency Motion" for Reconsideration of the Order Dismissing Appeal, to late-file an Opposition to the Motion to Dismiss Appeal, and to late-file a cross-appeal in this case (Motion for Reconsideration of Dismissal). Tenant Chaney asserted in the Motion for Reconsideration of Dismissal that Mr. Jamil Zouaoui, Esq., the petitioners' attorney before the Office of Administrative Hearings (OAH), had declined to represent them in the Housing Provider's appeal and therefore service of the Final Order and the Motion to Dismiss upon him was improper. The Commission issued an Order denying Tenant Chaney's motion on June 27, 2014 (Order Denying Reconsideration), because Mr. Zouaoui was the representative of record and service of all orders and pleadings

upon him was therefore proper. *See* 14 DCMR § 3803.2.¹ The Commission further denied Tenant Chaney’s motion to late file a cross-appeal of the Final Order, because the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3502.16(h), and the Commission’s rules, 14 DCMR § 3802.2, require that any appeal of a final order be filed with the Commission within ten (10) days of issuance.²

II. DISCUSSION

The Tenants request that the Commission permit them to late-file a motion for reconsideration of its May 8, 2014 Order Dismissing Appeal, and thereby “allow the Petitioners to file a cross-appeal to the Housing Provider’s appeal[.]” Motion for Leave to Late-file at 2. The Motion for Leave to Late-file asserts, in essence, a breakdown in the attorney-client relationship between Mr. Zouaoui and the Tenants and other parties to the Tenant Petition.³ For example, the Tenants contend that “legal barriers . . . emerged from the actions of Mr. Zouaoui to deliberately prevent the flow of critical Commission orders, etc.,” and that the Tenants “belief

¹ The Commission’s rule at 14 DCMR § 3803.2 provides:

When a party has a representative of record as provided in § 3812, service shall be made upon the representative.

² D.C. OFFICIAL CODE § 42-3502.16(h) provides, in relevant part:

An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental Housing Commission within 10 days after the decision of the Rent Administrator[.]

OAH assumed jurisdiction over tenant petitions from the Rent Administrator 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 Commission’s rule at 14 DCMR § 3802.2 provides:

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

³ The Commission observes that Tenant Mahmoud has also alleged misconduct by Mr. Zouaoui in a related case, raising issues that the Commission has dismissed as moot. *See* *Am. Rental Mgmt. Co. v. Chaney*, RH-TP-28,366 & RH-TP-06-28,577 (RHC Feb. 10, 2015) (Order on Notice of Failure of Service) and (RHC Jan. 23, 2015) (Order on Motion for Service and Referral).

that he was the attorney of record, in this 2008 case, impacted the [Tenant's] ability to act timely." Motion for Leave to Late-file at 1-2.

The Commission's rules provide that a motion for reconsideration of a final decision must be filed within ten (10) days of receipt of the decision. 14 DCMR § 3823.1.⁴ The Commission's rules further provide that a party may request an extension of time to file a pleading, other than a notice of appeal, by filing a motion at least five (5) days before the due date and providing good cause for the requested extension. 14 DCMR § 3815.1-2.⁵

As noted, the Commission's final decision in this case was issued on May 8, 2014. *See* Order Dismissing Appeal. Accordingly, the Tenant's October 5, 2015, Motion for Leave to Late-file, which requests an extension of time to file a motion for reconsideration of the Order Dismissing Appeal, was filed nearly a year and a half later than permitted by the Commission's rules. Further, the Motion for Leave to Late-file contains only broad statements that the Tenants were prevented from acting timely because of some vaguely-referenced "actions" by Mr. Zouaoui. It does not provide the Commission with any specific information that might establish good cause to grant the extension, such as when the Tenant's became aware of any particular

⁴ The Commission's rule at 14 DCMR § 3823.1 provides:

Any 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; provided, that an order issued on reconsideration is not subject to reconsideration.

⁵ The Commission's rule at 14 DCMR § 3815 provides, in relevant part:

3815.1 Any party may move to request a continuance of any scheduled hearing or for extension of time to file a pleading, other than a notice of appeal, or leave to amend a pleading if the motion is served on opposing parties and the Commission at least five (5) days before the hearing or the due date; however, in the event of extraordinary circumstances, the time limit may be shortened by the Commission.

3815.2 Motions shall set forth good cause for the relief requested.

developments in this case or why their motion is filed so extraordinarily far out of time.⁶ The Commission therefore has no basis to grant the Tenants an extension of time to file a motion for reconsideration. *See* 14 DCMR § 3815.1-2.

Moreover, even if the Motion for Leave to Late-file were timely, or if a motion for reconsideration were timely, or if the Commission were to waive either filing deadline despite the lack of good cause stated, the Commission would deny the Tenant's motion for reconsideration for the same reasons it denied Tenant Chaney's May 15, 2014, Motion for Reconsideration of Dismissal. Specifically, the Commission cannot grant the Tenants any relief by reconsidering or reversing its dismissal of the Housing Provider's appeal of the Final Order.

The Tenants request that they be allowed to file their own appeal of the Final Order, which was issued on May 27, 2013, and modified by reconsideration on June 24, 2013. *See* Motion for Leave to Late-file at 2 (asking that the Commission "reopen" the case to allow a cross-appeal); Reconsideration Order at 2; R. at 1756. Although the Housing Provider filed a timely notice of appeal on July 9, 2013, no notice of appeal was filed with the Commission by any other party to the Tenant Petition.

As noted, the Act and the Commission's rules require that any appeal of a final order be filed with the Commission within ten (10) days of service. D.C. OFFICIAL CODE § 42-3502.16(h), 14 DCMR § 3802.2. Under the Act and rules, the time limit for filing an appeal with the Commission is mandatory and jurisdictional. *See, e.g.,* Hirani v. Nomadic Real Estate, RH-TP-14-30,534 (RHC Aug. 28, 2015); Kuratu v. Ahmed, Inc., RH-TP-07-28,985 (RHC Feb. 28,

⁶ As the Commission noted in its Order Denying Reconsideration, pursuant to the Commission's rules, 14 DCMR §§ 3812.6 and 3813.1, Mr. Zouaoui was the attorney of record for the Tenants because of his appearance before OAH, even though he did not file a notice of appearance before the Commission. *See* Order Denying Reconsideration at 5-7 (citing 1460 Irving St. Tenants Assoc. v. 1460 Irving St., LP, CIs 20,760-20,763 (RHC Sept. 17, 2003); Mersha v. Marina View Tower Apts., TP 24,302 (RHC May 26, 2000); Wedderburn v. Thomas, TP 23,970 (RHC June 10, 1996); Salisbury Prop. Co. v. Sargisson, TP 22,187 (RHC Sept. 30, 1994); Dismer Auxier Realty v. Tenants of 5922 13th St., N.W., TP 20,364 (RHC Dec. 10, 1993)).

2014); Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012); *see also* 14 DCMR § 3815.1 (allowing motions for extensions of time to file pleadings “other than a notice of appeal”). The filing of an appeal by one party does not provide additional time for an opposing party to file a cross-appeal. Smith v. D.C. Rental Accommodations Comm’n, 411 A.2d 612, 614 (D.C. 1980); Linen v. Lanford, TP 27,150 (RHC Mar. 24, 2003). Therefore, the Commission has no authority to grant the Tenants an extension of time to file an appeal of the Final Order. 14 DCMR § 3802.2; Smith, 411 A.2d at 614; Hirani, RH-TP-14-30,534.

Accordingly, the Commission denies the Motion to Late-file because it is untimely as a request for an extension of time, because the underlying motion for reconsideration it requests to file would be extraordinarily late, and because reinstating the Housing Provider’s appeal would not permit the tenants to file a notice of cross-appeal.

SO ORDERED



CLAUDIA L. McKOIN, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER** in RH-TP-08-29,302 was mailed, postage prepaid, by first class U.S. mail on this 20th day of October, 2015 to:

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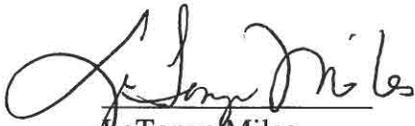
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