

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-08-29,489

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

Ward Three (3)

DONALD WASSEM
Tenant/Appellant

v.

**KLINGLE CORPORATION,
B.F. SAUL COMPANY, and
B.F. SAUL PROPERTY COMPANY**
Housing Providers/Appellees

ORDER DENYING RECONSIDERATION

August 10, 2016

SZEGEDY-MASZAK, CHAIRMAN. This is the fourth motion filed by tenant/appellant Donald Wassem (“Tenant”) with respect to the oral argument of this appeal. The following procedural history details the Tenant’s prior motions and requests.

First, on May 20, 2016, the Tenant filed a “Request to Participate in Hearing(s) by Telephone, Or to Be Deemed Present via One or More of Three Alternatives” (“Motion on Appearance”). On June 3, 2016, in light of the Tenant’s Motion on Appearance and the withdrawal of the other tenant/appellant in this case,¹ the Commission, *sua sponte*, continued the scheduled hearing to allow the Tenant time to secure representation or make arrangements to appear at a later date. Burkhardt v. Klingle Corp., RH-TP-08-29,489 (RHC June 3, 2016) (“Order on Continuance”). The Commission denied, with prejudice, the Tenant’s request to be

¹ The Notice of Appeal was joined by Christine Burkhardt, who, on June 2, 2016, filed a motion to withdraw her appeal, which was granted. See Burkhardt v. Klingle Corp., RH-TP-08-29,489 (RHC June 3, 2016).

excused from appearing and to rely entirely on the written submissions. Order on Continuance at 5-6.²

Second, on June 6, 2016, the Commission received a filing from the Tenant captioned “Request for No One to Be Dismissed for Failing to Appear at Hearing(s)” (“Motion on Dismissal”). The Motion on Dismissal requests that the Tenant be allowed to supplement the original Motion on Appearance with additional legal argument, specifically, that the Commission should follow D.C. App. R. 34(e) if any party fails to appear at the Commission’s scheduled hearing. *See* Motion on Dismissal at 1-2 (including text of D.C. App. R. 34(e)).

Third, on June 22, 2016, the Tenant filed a motion for reconsideration of the Commission’s Order on Continuance (“First Motion for Reconsideration”). The Motion for Reconsideration, in essence, both reiterates and arguably expands the legal grounds underlying the Tenant’s previous arguments in the Motion on Dismissal that the Commission should decide this appeal without oral argument. *See generally* First Motion for Reconsideration.

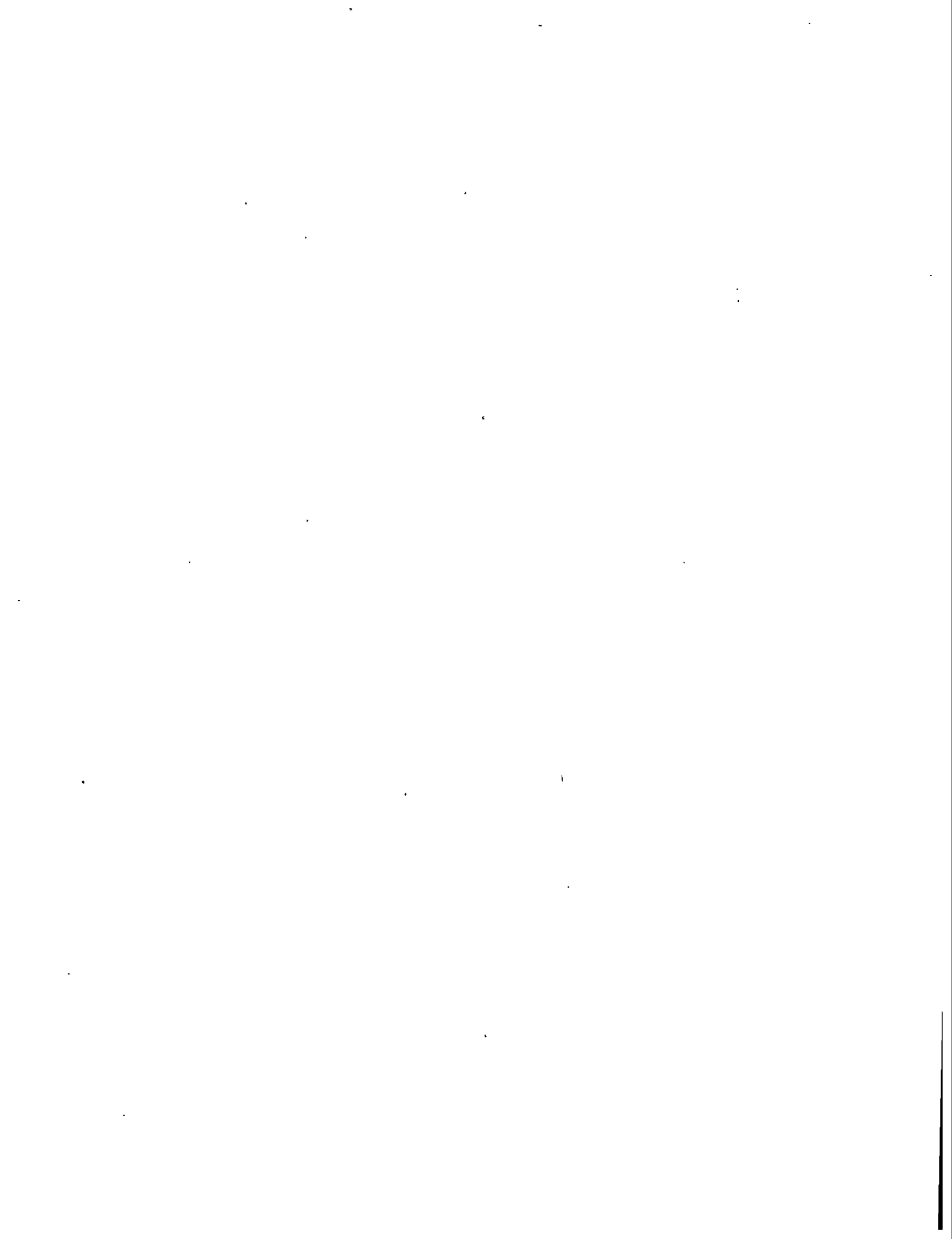
On July 8, 2016, the Commission denied the Motion on Dismissal as moot and denied the First Motion on Reconsideration because reconsideration is only available under the Commission’s rules for decisions “issued to dispose of the appeal” on the merits, and is therefore inapplicable to non-dispositive motions like the First Motion on Reconsideration. Wassem v. Klingle Corp., RH-TP-08-29,489 (RHC July 8, 2016) (“Order on Appearance at Hearing”);³ *see* 14 DCMR § 3823.1.

² The Commission notes that the Motion on Appearance was denied without prejudice with respect to the Tenant’s request to appear through a designated representative. Order on Continuance at 6.

³ The Commission also noted that the Tenant’s request is not yet “ripe,” because no hearing has been held at which he has failed to appear and a determination of the consequences from such a failure would be “hypothetical and contingent.” *See* Order on Appearance at Hearing at n.6 (citing Young v. Vista Mgmt., TP 28,635 (RHC Sept. 18, 2012)).

The instant motion, filed on July 25, 2016 (“Second Motion for Reconsideration”), asks the Commission to reconsider both the Order on Continuance, in part, and the Order on Appearance at Hearing and to thereby waive the requirement for an oral hearing on the appeal. The Second Motion for Reconsideration adds new legal arguments to the Tenant’s previous filings. Specifically, the Tenant maintains that his appeal should not be dismissed if he fails to appear at a scheduled hearing because the cases of Stancil v. D.C. Rental Hous. Comm’n, 806 A.2d 622 (D.C. 2002), and Mullin v. N Street Follies, LP, 712 A.2d 487 (D.C. 1998), (both affirming that the Commission may dismiss a case for a party’s failure to appear at a Commission hearing or comply with procedural orders) are factually distinguishable from the legal grounds underlying the procedural history of this case on appeal. *See* Second Motion for Reconsideration.

Following its thorough review of the Tenant’s claims in the Second Motion for Reconsideration, the Commission is satisfied that the Second Motion for Reconsideration requests the same relief that the Tenant sought in his first three motions regarding his (non)-appearance at a Commission hearing on his appeal. *See, e.g., Douglas v. Dorchester House Assocs., LLC*, RH-SF-08-20,098 (RHC Apr. 8, 2015) (Order on Motion to Reconsider Denial of Second Motion to Intervene) (applying “law of the case” doctrine to issues previously decided in same proceeding). Furthermore, insofar as the Second Motion for Reconsideration adds new legal arguments to the Tenant’s previous filings, *see supra*, the Commission has previously held that a motion for reconsideration is not an appropriate method to raise new legal issues or theories. *See Klingle Corp. v. Tenants of 3133 Conn. Ave., N.W.*, CI 20,794 (RHC Oct. 16, 2015) (Order on Reconsideration and Modification); Dreyfuss Mgmt. v. Beckford, RH-TP-07-28,895 (RHC Sept. 27, 2013); *see also Long v. Howard Univ.*, 512 F. Supp. 2d 1, 2 (D.D.C.



2007) (stating that a motion for reconsideration under Fed. R. Civ. P. 59(e) (identical to Super. Ct. Civ. R. 59(e)) is not “a vehicle for presenting theories or arguments that could have been advanced earlier” (internal quotations omitted)).

Finally, as the Commission previously stated in the Order on Appearance, a motion for reconsideration is not permitted under the Commission’s rules except with regard to an order that disposes of the merits of an appeal. *See supra* at 2-3; 14 DCMR § 3823.1. *See also* Holbrook St., LLC v. Seegers, RH-TP-14-30,571 (RHC June 9, 2016) (Order on Reconsideration of Escrow Account or Bond). Moreover, irrespective of the procedural defects in the Second Motion for Reconsideration, the Tenant only addresses the merits of his original claim that he should not be dismissed as a party-litigant if he fails to appear at a hearing; nothing in the motion addresses the legal grounds on which the Order on Appearance was issued – namely, that the Tenant’s assertions are moot (or, alternatively, not yet ripe) – *see supra* at n.3, and that the First Motion for Reconsideration was not appropriate under 14 DCMR § 3823.1. *See supra* at 2-3.

For the foregoing reasons, the Second Motion for Reconsideration is denied. The Clerk will proceed to schedule a hearing in this matter, and failure to appear may result in the dismissal of the Tenant’s appeal. *See* Stancil, 806 A.2d 622.

SO ORDERED


PETER B. SZEGEDY-MASZAK, CHAIRMAN

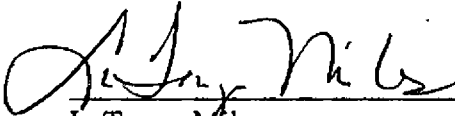

MICHAEL T. SPENCER, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER** in RH-TP-08-29,489 was served by first-class mail, postage prepaid, this **10th day of August, 2016**, to:

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

Richard W. Luchs
Debra F. Leege
Greenstein, DeLorme, & Luchs, P.C.
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036



LaTonya Miles
Clerk of Court
(202) 442-8949