DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-09-29,517

In re: 258 M St., N.W.

Ward Six (6)

MARY ANN CARTER
Tenant/Appellant

v.

BEA PAGET
Housing Provider/Appellee

ORDER DISMISSING APPEAL WITH PREJUDICE

December 11, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing 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- 2-510 (2001 Supp. 2008), 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.

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[1] The Office of Administrative Hearings (OAH) assumed jurisdiction over the conduct of hearings on tenant petitions from the RACD and the Rent Administrator 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 the RACD were transferred to the Rental Accommodations Division (RAD) of the Department of Housing and Community Development (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 HISTORY

On January 12, 2009, Tenant/Appellant, Mary Ann Carter (Tenant), residing in a single family townhouse located at 258 M Street, S.W. (Housing Accommodation), filed Tenant Petition (TP) 29,517 (Tenant Petition) with RAD, claiming that Bea Paget (Housing Provider) violated the Act as follows: (1) the Housing Accommodation was not properly registered; (2) the Housing Provider failed to file proper rent increase forms with RAD; (3) the rent charged exceeded the legally calculated rent ceiling for the rental unit at issue;[2] (4) the Housing Provider failed to provide the Tenants with a proper 30-day notice of rent increase; (5) the Housing Provider increased the Tenant's rents when the rental unit was not in substantial compliance with the Housing Regulations; (6) the Housing Provider served a notice to vacate on the Tenant in violation of the Act; (7) the Housing Provider substantially reduced services and/or facilities provided to the Tenant in connection with the rental of her unit; (8) the Housing Provider took retaliatory action against the Tenants in violation of § 502 of the Act. Tenant Petition at 1-3; Record (R.) at 60-63.

On April 15, 2009, the Housing Provider filed with OAH a motion to dismiss or, alternatively, to limit the scope of the Tenant's claims (Motion to Dismiss), on the basis that the Housing Accommodation was exempt from the Act, pursuant to D.C. Official Code § 42-3502.05(a)(3)(C) (2001 Supp. 2007), under the "small landlord exemption, "according to which, in relevant part:

> Sections 42-3502.05(f) through 42-3502 .19, except § 42-3502.17, shall apply to each rental unit in the District except . . . (3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided: . . . (C) [T]he housing

[2] The "Rent Control Reform Amendment Act of 2006" amended the Act by eliminating "rent ceilings," and, in their place, substituting the term "rent charged." D.C. Official Code § 42-3502.06(a) (2001 Supp. 2008). *See*, D.C. Law 16-145, §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006).

> provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption . . .

R. at 118–122. The Housing Provider also claimed that a number of the Tenant's contentions for the period between February 2007 and September 4, 2008 (relating to housing code violations, retaliation, reduction in services and facilities, and improper notice to vacate) were barred from consideration by OAH on the grounds of *res judicata*, since they had been adjudicated finally in a landlord-tenant action brought in the District of Columbia Superior Court. Paget v. Carter, 2008 LTB 040536 (D.C. Super. Ct. April 28, 2009); R. at 118-119. The Tenant opposed the Motion to Dismiss. R. at 148-152.

On July 1, 2009, an evidentiary hearing was held on the Motion to Dismiss. On July 31, 2009, the Administrative Law Judge for OAH issued an Order on the Motion to Dismiss. R. at 173-190. The ALJ denied the Housing Provider's claim that her unit was exempt from the Act under the small landlord exemption at D.C. Official Code § 42-3502.05(a)(3)(c). R. at 175. The ALJ preserved the following issues for further OAH adjudication:

> [F]or the period between February 2007 and September 4, 2008, (1) whether the Housing Accommodation was properly registered; (2) whether the Housing Provider failed to provide the Tenants with a proper 30-day notice of rent increase; (3) whether the Housing Provider failed to file proper rent increase forms with RAD; and (4) whether the rent charged exceeded the legally calculated rent ceiling for the rental unit at issue.

R. at 175.

The ALJ dismissed the following claims of the Tenant on the basis of *res judicata:* (1) the Housing Provider increased the Tenant's rents when the rental unit was not in substantial compliance with the Housing Regulations; (2) the Housing Provider substantially reduced services and/or facilities provided to the Tenant in connection with the rental of her unit (to the extent that they were housing code violations); (3) the Housing Provider took retaliatory action

against the Tenant in violation of § 502 of the Act; and (4) the Housing Provider served a notice to vacate on the Tenant in violation of the Act. R. at 175.

On September 9, 2009, the ALJ conducted an evidentiary hearing on the remaining issues. On May 13, 2010, the ALJ issued a Final Order. The ALJ determined that the for the period between April 2007 and September 4, 2008, (1) the Housing Provider had failed to register the Housing Accommodation in violation of D.C. Official Code § 42-3502.05(f) (2001 Supp. 2007); (2) the Housing Provider illegally increased rents for a four (4) month period during the tenancy; (3) the Housing Provider failed to provide the Tenant with a proper 30-day notice of rent increase; (4) the Housing Provider failed to file proper rent increase forms with RAD; and (4) that the rent charged did not exceed the maximum allowable rent. R. at 194-207. For the 4 month period during which the Housing Provider illegally raised rents, the ALJ awarded the Tenant the amount of $422.91. R. at 198.

On June 4, 2010, counsel for the Tenant filed a Motion for Reasonable Attorney's Fees pursuant to D.C. OFFICIAL CODE § 42-3509.02 (2001) and 14 DCMR §§ 3825.1 -.12 (2004). *See, also,* 1 DCMR § 2940.2 (2004). R. at 238. This motion was opposed by the Housing Provider. R. at 252.

On June 7, 2010, the Tenant filed a motion for reconsideration of the OAH Order dated July 31, 2009, specifically claiming that the ALJ had erred in dismissing the Tenant's claim of retaliation and that the Tenant had met her evidentiary burden in refuting the Housing Provider's *res judicata* defense. R. at 241-246. This motion was opposed by the Housing Provider. R. at 255-262.

On October 22, 2010, the ALJ granted the Tenant's counsel's Motion for Reasonable Attorney's Fees, reducing the requested amount to $6,789.00. R. at 268-278. Also on October

22, 2010, the ALJ denied the Tenant's motion for reconsideration. R. at 263-267. The ALJ determined that the Tenant had failed to provide sufficient evidence from the Superior Court proceeding to support her claim that *res judicata* should not bar her retaliation claim before OAH. R. at 265.

On November 9, 2010, the Tenant (proceeding *pro se*) filed a Notice of Appeal. The Notice of Appeal states, in the Tenant's handwriting, that it is an appeal from a decision and order of the Rent Administrator dated "05/13/2010." Notice of Appeal at 1. However, there is no decision by OAH in this proceeding dated "05/13/2010." The Tenant listed the following issues in the Notice of Appeal:

> 1. The court erred by dismissing petitioner's claims of retaliation in order on Housing Provider's Motion to Dismiss of 7-31-2009;
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> 2. Court erred by holding that the property was properly registered which [sic] landlord failed to obtain a business license, which is a pre-requisite to registration;
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> 3. Court erred by concluding that rent was properly increased as [sic] September 4, 2008, as registration was deficient;
>
> 4. Court erred & abused its discretion by basing its holdings on numerous factual errors;
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> 5. Court erred by deciding that the demanded rent was limited to the amount of increase.

Notice of Appeal at 1.[3] The Housing Provider did not respond to the Tenant's Notice of Appeal.

On March 9, 2011, the Commission received a formal document from OAH, entitled "SUGGESTION OF BANKRUPTCY." In relevant part, the document stated the following:

> The defendants [sic], Birthe Bea Paget, hereby gives notice of their [sic] filing of Bankruptcy on the record, 6:11-bk-02729, Chapter 7, filed on February 28, 2011, in the Middle District of Florida, Orlando Division.

[3] The issues are stated in language practically identical to that of the Tenant.

> Pursuant to the United States Code certain acts [sic] against the debtor or their [sic] estate is [sic] automatically stayed.

Suggestion of Bankruptcy at 1 (emphasis added). The document was signed by "Sheryl S. Zust, Florida Bar No.: 0934259, 4649 Clyde Morris Blvd., Ste. 610, Port Orange, FL 32129." *Id.* The Certificate of Service was dated March 2, 2011.[4] *Id.*

On March 21, 2011, pursuant to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 362(a)(1) (2006),[5] the Commission issued an automatic stay of its proceedings in this case until relief was granted (or the case was otherwise terminated) under applicable provisions of the Bankruptcy Act by the U.S Bankruptcy Court for the Middle District of Florida.

On or about October 1, 2013, the Commission (through Clerk of the Court LaTonya Miles) contacted Ms. Zust regarding the status of the bankruptcy proceedings in Florida. Ms. Zust informed Ms. Miles that the proceedings had terminated.

On October 7, 2013, the Commission issued a Notice of Scheduled Hearing (Hearing Notice) advising the parties of the Commission hearing date for the appeal, namely November 19, 2013. The record reflects that the Hearing Notice was mailed, postage prepaid, by first class U.S. mail, to the Tenant and the Housing Provider, respectively, on October 7, 2013 at the

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[4] The Certificate of Service only lists the two (2) attorneys of record in this case – Lisa A. Jones and Morris R. Battino – as recipients of the Suggestion of Bankruptcy. The addresses of the 2 attorneys in the Certificate of Service are the same as those contained in the OAH record and in the Commission record. However, Ms. Zust also mailed a copy of the Suggestion of Bankruptcy to OAH, which received it on March 7, 2011.

[5] Under the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 362(a)(1), the automatic stay applies to, *inter alia*,

> the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . .

addresses contained in the Notice of Appeal. In the Hearing Notice, the Commission informed the parties that:

> The failure of either party to appear at the scheduled time [would] not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an appellant to appear may result in the dismissal of the party's appeal.

Hearing Notice at 1 (emphasis added).

On November 19, 2013, prior to the scheduled hearing time, and according to an oral assertion by the Clerk of the Court, LaTonya Miles, which the Commission has no reason to question, the Tenant contacted Ms. Miles by phone and stated to her that the Tenant had received proper notice of the Commission hearing, but would not be attending. Additionally, the Tenant represented to Ms. Miles that she was intending to even seek dismissal of her appeal, without apparent opposition from the Housing Provider.

Neither party was present at the Commission hearing on November 19, 2013. Consequently, after waiting thirty (30) minutes past the scheduled hearing time, the Commission, on its own motion and under the authority of Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622 (D.C. 2002), *see infra* at 8, moved to dismiss the appeal due to the Tenant's failure to appear.

II. LEGAL ANALYSIS AND ORDER

Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), "[i]n contested cases, the proponent of a rule or order shall have the burden of proof." *See also* Wilson v. KMG Mgmt., LLC, RH-TP-11-30,087 (RHC May 24, 2013); Barnes-Mosaid v. Zalco Realty, Inc., RH-TP-08-29,316 (RHC Feb. 24, 2012); Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000). Here, the Tenant was the proponent of the Notice of Appeal and therefore had the burden to prosecute the appeal in the Commission. There is no evidence in the record that the Tenant did not receive actual notice of the Commission's hearing; nonetheless, the Tenant failed to appear. In fact, as

noted *supra*, the Tenant contacted the Commission prior to the hearing, stating that she did receive notice of the hearing and that she was not planning to appear, and further indicating her intention to seek dismissal of her appeal. As noted *supra*, the Commission's Hearing Notice warns parties that their failure to appear may result in the dismissal of the appeal.

In Stancil, TP 24,709, the Commission dismissed an appeal when neither the housing provider/appellant nor his attorney appeared at the scheduled hearing. Affirming the Commission's dismissal of the housing provider's appeal, the District of Columbia Court of Appeals (DCCA) held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing. *See* Stancil, 806 A.2d at 622-625. The DCCA recognized that, although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, 14 DMCR § 3828.1 (2004)[6] empowers the Commission to rely on the DCCA's rules when its rules are silent on a matter before the Commission. *Id.*

In Stancil, 806 A.2d at 625, the DCCA noted that DCCA Rule 14 (D.C. App. R. 14) permits dismissal of an appeal "for failure to comply with these rules or for any other lawful reason," and that DCCA Rule 13 (D.C. App. R. 13) "authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court's procedural rules." Stancil, 806 A.2d at 625. The DCCA concluded that "both [DCCA] Rule 13 and Rule 14 support the proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal." Stancil, 806 A.2d at 625. Regarding the Commission, the DCCA determined that it was unable to "find fault with the RHC's

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[6] According to 14 DMCR § 3828.1 (2004):

> When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

[Commission's] consideration of our [DCCA's] rules in applying section 3828.1 of its own regulations." *Id.* Consequently, pursuant to Stancil, 806 A.2d at 625, the Commission has discretion to dismiss an appeal when the appellant fails to attend a scheduled hearing. *See also* Wilson, RH-TP-11-30,087; Barnes-Mosaid, RH-TP-08-29,316; Stancil, TP 24,709.

III. CONCLUSION

For the reasons stated herein, the Commission dismisses this appeal by the Tenant *with prejudice* because the Tenant failed to appear at the scheduled Commission hearing and prosecute her appeal.

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, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER DISMISSING APPEAL WITH PREJUDICE** in **RH-TP-09-29,593** was mailed, postage prepaid, by first class U.S. mail on this **11th day** of **December, 2013** to:

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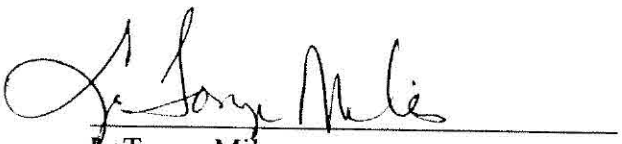

LaTonya Miles
Clerk of the Court
(202) 442-8949