

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,875

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

Ward Three (3)

**CHRISTINE BURKHARDT and
DONALD WASSEM**
Tenants/Appellants

v.

KLINGLE CORPORATION, et al.
Housing Providers/Appellees

ORDER ON MOTION FOR RECONSIDERATION OF MAY 14, 2015 ORDER

June 16, 2015

McKOIN, COMMISSIONER. 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 Rental Accommodations Division (RAD) of the District Department of Housing and Community Development (DHCD).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 Rental Accommodations and Conversion Division (RACD) of the Department of Consumer and Regulatory Affairs (DCRA) 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 the RAD in DHCD by § 2003 of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

On December 23, 2104, Tenants/Appellants Christine Burkhardt and Donald Wassem (collectively, Tenants)² filed a notice of appeal with the Commission. On April 14, 2015,³ the Commission issued a Notice of Scheduled Hearing and Notice of Certification of Record (Notice of Scheduled Hearing), setting a hearing date for May 7, 2015. On April 21, 2015, the Tenants filed a joint “Requests for Extension of Time to File Appeal Brief(s) and for Postponement of Hearing Until After the Dates Briefs Are Then Due” (Motion for Continuance). The Motion for Continuance requested that the due date for briefing in this case be extended and that the May 7, 2015, hearing be rescheduled for some time after the week of June 29, 2015. Motion for Continuance at 2. Klingle Corporation, B.F. Saul Company, and B.F. Saul Property Company (collectively, Housing Providers) filed an “Opposition to the Motion for Continuance” on April 30, 2015, asserting that the Motion for Continuance does not provide a “valid, verifiable reason for asking for an extension, much less such a long one.” On May 1, 2015, the Commission issued its Order on Motion for Continuance (Order on Motion for Continuance, RH-TP-10-29,875 (RHC May 1, 2015)) granting the continuance and establishing a new date of June 9, 2015, for the hearing, and May 13, 2015, for the filing of Tenants’ brief and June 2, 2015, for the a Housing Providers’ brief.⁴

² The Commission observes that all filings with it in this matter have so far been captioned with “Kenneth Mazzer, *et al.*” as the appellants, consistent with the caption given by OAH. Because only Ms. Burkhardt and Mr. Wassem have appealed the final order issued by OAH, the Commission, in its discretion, amends the case caption of this appeal for all subsequent pleadings and orders. *See* 14 DCMR § 3808.1, .2.

³ The Commission’s notice on April 14, 2015, was a reissuance of a notice issued on April 3, 2015, which was addressed to Ms. Burkhardt and Mr. Wassem at the incorrect addresses.

⁴ In the Housing Providers’ Motion for Reconsideration of Commission Order Dated May 14, 2015, they state: “As the Commission is aware, it granted the Tenant/Appellants request to reschedule the hearing before the date on which Appellees were required to file an opposition to the Request.” Motion for Reconsideration of Commission Order Dated May 14, 2015, at 1. However, the Commission’s records indicate that the Housing Providers filed an “Opposition to Request for Extension of Time to File Appeal Brief(s) and for Postponement of Hearing until after the Dates Briefs are then Due” on April 30, 2015, one day before the Commission issued its Order on Motion for

On April 29, 2015, Tenant Petitioner Donald Wassem filed a “Request to Participate by Telephone, or to Appear Via Fellow Member of Unincorporated Nonprofit Association, or to Rely on Written Pleadings” (Motion to Participate). In his Motion Tenant Petitioner Wassem asked to be allowed to participate in the hearing in RH-TP-10-29,875, by telephone, via representation by a fellow member of an unincorporated nonprofit association, or rely on written pleadings. On May 14, 2015, the Commission issued its Order on Appearance and Representation granting Tenant Petitioner Wassem’s Motion by allowing Ms. Burkhardt, his co-Petitioner in this case, to represent him if she filed a written notice of appearance. (Order on Appearance and Representation, RH-TP-10-29,875 (RHC May 14, 2015)). Ms. Burkhardt filed a “Notice of Appearance of Member of a Group for a Fellow Member (Co-Appellant) Who will be Absent from the Hearing” on May 29, 2015.

On May 20, 2015, the Housing Providers filed a “Motion for Reconsideration of Commission Order Dated May 14, 2015” (Motion for Reconsideration of May 14, 2015 Order). The Commission’s rules state that:

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.

14 DCMR § 3823.1

The Commission’s May 14, 2015, Order was not a final dispositive decision on the merits of the appeal in this case, RH-TP-10-29,875. The May 14, 2015, Order was a procedural order addressing the appearance and representation of one of the Tenant Petitioners in this proceeding.

Continuance, RH-TP-10-29875 (RHC May 1, 2015). So, the Housing Providers did have the opportunity to object to the “Requests for Extension of Time to File Appeal Brief(s) and for Postponement of Hearing Until After the Dates Briefs Are Then Due” and to express their reasons for why the Motion should be denied.

Therefore, the Housing Providers use of a motion for reconsideration to object to the May 14, 2015, Order, was inappropriate. The Housing Providers should have objected to Tenant Petitioner Wassem's Motion to Participate by filing a motion opposing the request within five days as required by 14 DCMR § 3814.3, plus three days for mailing (i.e., by May 11, 2015).⁵ Having failed to file an opposition within the required time the Housing Providers have lost their opportunity to object.

In the Motion for Reconsideration of May 14, 2015, Order the Housing Providers state that Tenant Petitioner Wassem's Motion to Participate relates only to the previously scheduled May 7, 2015, hearing and not to the rescheduled date of June 9, 2015, and that Mr. Wassem did not file a separate Motion for the rescheduled hearing date. Reconsideration of May 14, 2015 Order, at 2. Tenant Petitioner Wassem's Motion states ". . . requests to participate in the hearing(s) in this matter – the first of which is currently scheduled for May 7, 2015 . . ." Motion to Participate, at 1. In Tenant Petitioner Wassem's statement he references more than one possible hearing and that the "first" hearing is scheduled for May 7, 2015. Mr. Wassem presumed the possibly of more than one hearing, especially in light of his request along with Ms.

⁵ 14 DCMR § 3814.3 provides as follows:

Any party may file a response in opposition to a motion within five (5) days after service of the motion.

14 DCMR § 3816.3 provides as follows:

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

14 DCMR § 3816.5 provides as follows:

If a party is required to serve papers within a prescribed period and does so by mail, three (3) days shall be added to the prescribed period to permit reasonable time for mail delivery.

