

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-10-29,875

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

Ward Three (3)

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

v.

KLINGLE CORPORATION, et al.
Housing Providers/Appellees

ORDER ON APPEARANCE AND REPRESENTATION

May 14, 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 of the 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 Don Wassem (collectively, Tenants) filed a notice of appeal with the Commission (Notice of Appeal). 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). On May 1, 2015, the Commission granted the Tenants a continuance of the hearing, and set a new hearing date in this case of June 9, 2015, at 10:00 a.m. Order on Motion for Continuance at 4.

Currently pending before the Commission is a motion filed by Mr. Wassem on April 29, 2015, titled “Request to Participate by Telephone, or to Appear via Fellow Member of Unincorporated Nonprofit Association, or to Rely on Written Pleadings” (Motion on Appearance).² The Motion for Appearance states that Mr. Wassem now resides three (3) time zones away from the District of Columbia and that travel for the purpose of the hearing in this matter is not feasible. Motion on Appearance at 1. Because the Commission’s Notice of Scheduled Hearing and Notice of Certification of the Record (Notice of Scheduled Hearing) warns that the Commission may dismiss an appeal based on an appellant’s failure to appear, *see, e.g., Stancil v. D.C. Rental Hous. Comm’n*, 806 A.2d 622, 622-25 (D.C. 2002), Mr. Wassem seeks leave to prosecute his appeal either by telephone, through Ms. Burkhardt as his representative, or on the briefs alone. *See* Motion on Appearance at 2.

The Commission’s rules on motions provide that, “Any party may file a response in opposition to a motion within five (5) days after service of the motion.” 14 DCMR § 3814.3.

² The Commission has, in consultation with its staff, considered Mr. Wassem’s alternative request to appear via telephone, but cannot currently assure that an appearance in this manner would be adequately recorded by the Commission’s recording devices. *See* 14 DCMR § 3820.1 (“The entire proceedings of hearings on motions and appeals shall be recorded on tape, which shall remain in the custody of the Commission at all times.”). The Commission notes that, notwithstanding this rule, it no longer uses analog tape and has switched to a digital audio recording system. Nonetheless, the substance of the Commission’s rule requires the audio of every hearing to be captured and retained. *See id.*

Under the Commission's rules for computation of time, only business days are counted for time periods less than ten (10) days, and an additional three (3) days are permitted when service is by mail. See 14 DCMR § 3816. Because Ms. Burkhardt, on behalf of Mr. Wassem, served the Housing Provider with the Motion on Appearance by mail on April 29, 2015, the Commission determines that the Housing Provider was allowed to file a response in opposition by May 11, 2015. As of the date of this Order, the Commission has received no response in opposition to the Motion on Appearance.

The Commission's rules on appearances and representation provide, in relevant part, that in any proceeding, "[a] member selected by the members of an association or an employee of the association, a group of tenants or non-profit corporation may represent the association, group or non-profit corporation." 14 DCMR § 3812.1(d). Although this rule may not be a model of clarity, the Commission, mindful of the remedial purposes of the Act and the difficulties that may be faced by *pro se* litigants, is satisfied that a member of a group of tenants, selected by the other members of the group, including a group of only two (2) tenants, may appear on behalf of the other member(s) of the group. See Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1298-99 (D.C. 1990); Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) at n.14.

The Commission must, however, be satisfied that such representation is actually authorized. See 14 DCMR § 3812.3 ("Any person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity."); Am. Rental Mgmt. Co. v. Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (RHC Dec. 12, 2014) (Decision) at 59-63 (substantial evidence on the record of signed, dated consent by tenants to representation by an association or its attorney sufficient to constitute an appearance before OAH); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (where

the ALJ's findings concerning the identity and number of tenants represented by a tenant association was not supported by substantial evidence, only tenants who appeared and testified had standing on appeal). In this case, the Commission is satisfied that Mr. Wassem's Motion on Appearance constitutes substantial evidence of his consent to be represented in this appeal by Ms. Burkhardt. *See* 14 DCMR § 3812.3; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (Decision) at 59-63.

Nonetheless, the Commission's rules require that "[a]ny individual who wishes to appear in a representative capacity before the Commission shall file a written notice of appearance stating the individual's name, local address, telephone number, District of Columbia Bar registration number, if applicable, and for whom the appearance is made." 14 DCMR § 3812.6; *see also* Lewis v. Wash. Metro. Area Transit Auth., 463 A.2d 666, 672 (D.C. 1983) ("The agent must have purported to act on behalf of the principal[.]"); RESTATEMENT (SECOND) OF AGENCY § 15 (1958) ("An agency relation exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act." (emphasis added)). Therefore, if Ms. Burkhardt files a notice of appearance prior to the rescheduled hearing, she may appear on behalf of Mr. Wassem, and Mr. Wassem will not need to personally attend in order to prosecute his appeal. 14 DCMR § 3812; Stancil, 806 A.2d at 622-25; Chaney, RH-TP-06-28,366 & RH-TP-06-28,577 (Decision).

Accordingly, Mr. Wassem's Motion on Appearance is conditionally granted, subject to Ms. Burkhardt's entry of an appearance on his behalf.

SO ORDERED


CLAUDIA L. MCKOIN, COMMISSIONER

