

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 OPPOSITION TO MOTION FOR CONTINUANCE

June 16, 2015

McKCOIN, 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.

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

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.

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 request 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). On May 29, 2015, the Tenant Petitioners filed “Opposition to Motion for Reconsideration and Motion to Disqualify Current Counsel for Klinge, et al” (Opposition to Motion for Reconsideration).

The Commission will issue a separate order in response to the Housing Providers’ Motion for Reconsideration of May 14, 2015 Order, therefore, the Commission will not address the arguments the Tenants raised in their Opposition to Motion for Reconsideration on that matter. In this Order the Commission will address the part of the Tenants’ Opposition to Motion for Reconsideration requesting the disqualification of the counsel for Klinge Corp., et al.

In the “Opposition to Motion for Reconsideration” the Tenants ask that the Commission disqualify counsel for the Housing Providers from “. . . appearing or practicing before the Commission and the OAH in this matter, and from appearing or practicing before the Commission and OAH in any rental housing matter for, say, 6 months, per RHC Rule 3812.5. . .

.” Opposition to Motion for Reconsideration, at 3. The Commission’s regulation 14 DCMR 3812.5 states as follows:

The Commission may disqualify or deny, temporarily or permanently, the privilege of appearing or practicing before it or the Rent Administrator in any way, to any individual who is found by the Commission, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct; provided, that any individual who shall willfully mislead the Commission or its staff by a false statement of fact or law shall be disqualified permanently.

The Tenants do not provide a reason for their request to dismiss the Housing Providers’ counsel except that the counsel was “disingenuous” in requesting the disqualification of Tenant Petitioner Wassem from Petition RH-TP-10-29,875, in its “Motion for Reconsideration of May 14, 2015 Order.” Opposition to Motion for Reconsideration, at 3. The Tenants did not raise any of the reasons to disqualify counsel for the Housing Providers included in 14 DCMR 3812.5. *See Angela Gardiner v. Charles C. Davis*, TP 24,955 (November 17, 2000); *George Boatwright v. CFM Management, Inc.*, TP 21,614 & TP 21,287 (RHC September 20, 1991); *Beverly Ruffin v. Sherman Arms, LLC*, TP 27,982 (RHC July 29, 2005); *Tenants of Dorchester House Apartments v. Dorchester House Associates*, CI 20,767 and CI 20,768 (RHC January 24, 2003).

Attorneys are required by the District of Columbia Rules of Professional Conduct to represent their clients zealously.⁴ Comments to this rule state that this applies to an attorney’s conduct under agency regulations and that the “duty requires the lawyer to pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take

⁴ Rules of Professional Conduct: Rule 1.3—Diligence and Zeal

(a) A lawyer shall represent a client zealously and diligently within the bounds of the law.

