

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-12-30,279

In re: 2727 29th Street, N.W., Apt. 410

Ward Three (3)

SMITH PROPERTY HOLDING THREE (DC), L.P.
Housing Provider/Appellant

v.

MUNEER A. SHEIKH
Tenant/Appellee

**ORDER ON DEATH OF TENANT/APPELLEE AND MOTION TO WITHDRAW AS
COUNSEL**

September 16, 2016

EPPS, COMMISSIONER. This case is on appeal to the Rental Housing Commission (“Commission”) from a final order of the Office of Administrative Hearings (“OAH”), based on a petition filed in the Rental Accommodations Division (“RAD”) 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 - 42-3509.07 (2012 Repl.), the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501 - 2-510 (2012 Repl.), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), and 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over contested 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 of 2001, 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 Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

A complete procedural history prior to this Order is set forth in the Commission's Decision and Order on July 29, 2015. *See* Sheikh v. Smith Prop. Holdings Three (DC) LP, RH-TP-12-30,279 RHC July 29, 2015) ("First Decision and Order"). On May 19, 2014, Muneer Sheikh ("Tenant"), resident of 2727 29th Street, N.W., Unit 410 ("Housing Accommodation"), filed a notice of appeal ("First Notice of Appeal), from which the Commission issued the First Decision and Order, remanding the case to OAH for further proceedings. On January 29, 2016, OAH issued a second final order, based on the Commission's instructions on remand ("Final Order after Remand"). On February 16, 2016, housing provider/appellant Smith Property Holdings Three (DC), L.P. ("Housing Provider") filed a notice of appeal from the Final Order after Remand ("Second Notice of Appeal").

On September 6, 2016, Marc Borbely, Esq., an attorney with D.C. Tenants' Rights Center, counsel for Tenant ("Tenant's Counsel"), filed a motion to withdraw as counsel ("Motion to Withdraw"). In the Motion to Withdraw, the Tenant's Counsel states that his client has died and that:

Nancy Cahill, an attorney who has been retained by Waqas Sheikh, one of Muneer Skeikh's sons, to assist in probating Muneer Skeikh's estate, estimates that Waqas Sheikh will be appoint personal representative by September 9, 2016.

See Motion to Withdraw at 1. The Tenant's Counsel also represented that, with the appointment of a personal representative, he "expects to be hired as counsel for the Appellee's estate . . . to continue to prosecute this litigation." Motion to Withdraw at 1. As of the date of this order, no personal representative has appeared before the Commission.

II. DISCUSSION

The Commission's rules on withdrawals of appearances are found at 14 DCMR § 3813 (2004) and provide as follows:

3813.1 If an attorney or other person representing a party wishes to withdraw from a case pending before the Commission, a written motion for application to withdraw shall be filed.

3813.2 The motion shall state whether the party consents to or opposes the motion and whether the party will be unrepresented or will have substitute representation. A copy of the motion shall be served on the party and the party advised that he or she has the right to oppose the motion.

3813.3 The motion shall state the specific reasons for withdrawal and shall state whether the absence of representation will prejudice the rights of the party.

3813.4 Motions for application to withdraw shall be promptly decided.

Although the Commission is required to decide the Motion to Withdraw promptly, the application of the Commission's rule to this case is complicated by the apparent death of the Tenant. Until a personal representative or substitute counsel appears, the Commission cannot be satisfied that the interest of the Tenant in this case, to the extent it survives his death, will not be prejudiced if it becomes necessary for the Housing Provider or Commission to serve the deceased party.

The Commission rules are silent on the effect of the death of a party to an appeal. As such, the Commission, where practicable, is guided by the procedures of the District of Columbia Court of Appeals ("DCCA") or the Superior Court of the District of Columbia ("Superior Court") when the Commission's rules are silent on an issue. 14 DCMR § 3828.1 (2004).² The DCCA rule related to death of a party provides, in pertinent part:

² 14 DCMR § 3828.1 provides the following:

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

If a party dies after a notice of appeal has been filed or while a proceeding is pending in this court, the decedent's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

D.C. App. R. 43(a)(1). Similarly, the Superior Court rules provide the following:

If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Super. Ct. Civ. R. 25(a)(1).

The Commission has previously addressed the death of a party in the cases of Douglas v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC July 10, 2015), Hardy v. Jenkins, RH-TP-10-30,009 (RHC Mar. 29, 2012), Killingham v. Marina View Trustee, LLC, VA 07-017 (RHC Mar. 1, 2011), and Mersha v. Marina Towers Apartments Town Center, L.P., TP 24,970 (RHC Feb. 19, 2003). In each case, the Commission followed the guidance of D.C. App. R. 43(a)(1) and Super. Ct. Civ. R. 25(a)(1), recited *supra*. The Commission provided the parties with 90 days from the date of suggestion of death on the record, for a "duly-appointed personal representative" to file a motion for substitution for the decedent. See Douglas, RH-SF-09-20,098 at 3; Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4. The Commission cautioned in each case that, if no motion for substitution was filed by the end of the 90-day period, the appeal would be dismissed *with prejudice*. See Douglas, RH-SF-09-20,098 at 3; Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8-9; Mersha, TP 24,970 at 4.

Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

In this case, the Tenant's Counsel informed the Commission of the Tenant's death on the record in his Motion to Withdraw, filed on September 6, 2016. *See* Motion to Withdraw at 1. Mr. Borbely's notice to the Commission is in the nature of a suggestion of death. *See* D.C. App.R. 43(a)(1). In light of the foregoing, and in accordance with relevant Commission precedent described *supra* at 3-4, the Commission will provide Mr. Sheikh's duly-appointed personal representative a period of 90 days from the date of the suggestion of death on September 6, 2016 to file, motion for substitution, substituting the personal representative as a party to this case, in lieu of the Tenant. *See* D.C. App. R. 43(a)(1) & Super. Ct. Civ. R. 25(a)(I); Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4. The Commission also instructs Mr. Sheikh's duly-appointed personal representative to file a certified copy of Mr. Sheikh's death certificate and documentation of the personal representative's appointment as exhibits to the motion for substitution.³

The Commission calculates that the 90-day period will expire on December 5, 2016. If no personal representative for Mr. Sheikh files a motion for substitution with the Commission by December 5, 2016, the Commission will dismiss this appeal, *with prejudice*. *See Douglas*, RH-SF-09-20,098 at 3; Hardy, RH-TP-10-30,009 at 7; Killingham, VA 07-017 at 8; Mersha, TP 24,970 at 4.

The Commission is satisfied that the Tenant's Counsel's Motion to Withdraw will be appropriate to grant upon the substitution of a personal representative for the Tenant and that, until substitution is made, the Motion to Withdraw should be held in abeyance. The Commission observes that, because the Tenant's Counsel received consent to withdraw from the Housing

³ A courtesy copy of this order will be mailed to the attorney identified by the Tenant's Counsel as the counsel retained to probate the Tenant's estate.

Provider,⁴ and given that this matter cannot be scheduled for hearing on the Second Notice of Appeal until Mr. Sheikh's duly-appointed personal representative has filed the necessary pleadings, holding the Motion to Withdraw in abeyance will not result in any prejudice to the Tenant, particularly because the Tenant's Counsel "expects to be hired as Counsel for Appellee's estate . . . to continue to prosecute this litigation." See Motion to Withdraw at 1.

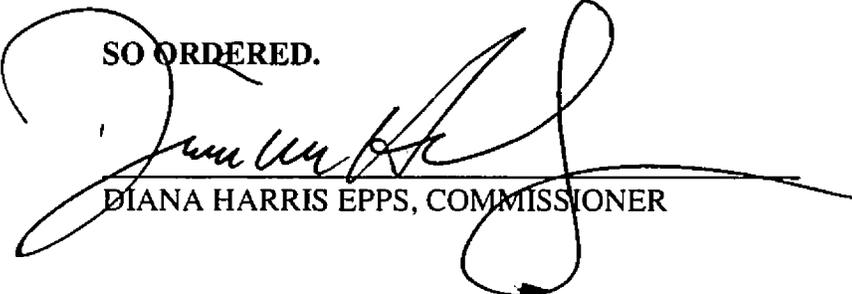
III. CONCLUSION

For the foregoing reasons, the Motion to Withdraw shall be held in abeyance for a period not to exceed 90 days from the date of the suggestion of death on September 6, 2016, during which time the following shall occur:

1. Mr. Sheikh's duly-appointed personal representative shall within a period of ninety (90) days from the date of the suggestion of death on September 6, 2016, file a motion for substitution, substituting the personal representative as a party to this case, in lieu of Mr. Shiekh; and
2. Mr. Sheikh's duly-appointed personal representative shall within a period of ninety (90) days from the date of the suggestion of death on September 6, 2016, file a certified copy of Mr. Muneer Sheikh's death certificate and documentation of the appointment of the personal representative.

Finally, The Commission shall issue an Order addressing the Motion to withdraw within 10 days of it receipt of the motion for substitution.

SO ORDERED.



DIANA HARRIS EPPS, COMMISSIONER

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,

⁴ Counsel for Appellee/Tenant states "Appellant consents to the relief sought herein, per an e-mail from Housing Provider's counsel." See Motion to Withdraw at 1.

“[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 (2016.), “[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
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

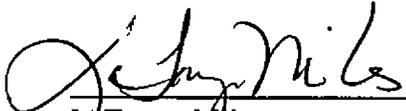
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER on Death of Tenant and Motion to Withdraw as Counsel** in RH-TP-12-30,279 was mailed, postage prepaid, by first class U.S. mail on this **16th day of September, 2016**, to:

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