

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

RH-TP-15-30,658

In re: 4100 East Capitol Street N.E., Apt. D-44

Ward Seven (7)

**JEROME BETTIS**  
Tenant/Appellant

v.

**HORNING ASSOCIATES**  
Housing Provider/Appellee

**ORDER ON MOTION FOR RECONSIDERATION**

March 31, 2017

**EPDS, 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 Department of Housing and Community Development (“DHCD”).<sup>1</sup> These proceedings are governed by 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 (2012 Repl.), the District of Columbia Administrative Procedures Act (“DCAPA”), D.C. OFFICIAL CODE §§ 2-501 - 510 (2012 Repl.), and the District of Columbia Municipal Regulations (“DCMR”), 1 DCMR §§ 2800-2899, 1 DCMR §§ 2921-2941, and 14 DCMR §§ 3800-4399 (2004).

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<sup>1</sup> 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 of 2001, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2012 Repl.). The functions and duties of RACD were transferred to the RAD within 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 (2012 Repl.).

## I. PROCEDURAL HISTORY

A complete procedural history prior to this Order is set forth in the Commission's Decision and Order on March 2, 2017. *See Bettis v. Horning Assocs.*, RH-TP-15-30,658 (RHC Mar. 2, 2017) (Decision and Order). On April 29, 2015, Jerome Bettis ("Tenant"), residing in Unit D-44 of the housing accommodation located at 4100 East Capitol Street, N.E. ("Housing Accommodation"), filed a notice of appeal ("Notice of Appeal"), from which the Commission issued a Decision and Order, remanding the case to OAH for further proceedings.

The Commission decided that it was an abuse of discretion for the ALJ to fail to rule on the Tenant's Motion for Subpoenas, and thus remanded to OAH on this issue, with instructions to issue an order ruling on the Tenant's Motion for Subpoenas in accordance with 1 DCMR §§ 2824 & 2934. Decision and Order at 15-16; *see* 14 DCMR § 3807.1; *see also Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 908 (D.C. 1998) (remanding for a ruling on a discovery motion that was never ruled upon stating that it would not remand "if the trial court's decision on the discovery motion were a foregone conclusion").

The Commission reserved ruling on four out of the remaining five issues<sup>2</sup> raised in the Notice of Appeal to be addressed once the OAH record is complete and final: (1) "What is the impact of the judge implementing a time restriction in the middle of a hearing on petitioner's due process?"; (2) "Petitioner takes exceptions to IV. Findings of Fact, A. Services and Facilities;"

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<sup>2</sup> The Commission dismissed a fifth issue regarding government agencies' alleged hindrance of his prosecution of the tenant petition, determining that the Tenant failed to raise these issues before the ALJ, and therefore the Commission could not review these issues for the first time on appeal. *See, e.g., Thomas Ivancie v. Estate of Lewis H. Curd*, RH-TP-07-28,989 (RHC March 25, 2016); *Smith Prop. Holdings Five (D.C.) L.P. v. Morris*, RH-TP-06-28,794 (RHC Dec. 23, 2013) at n.13; *Barac Co. v. Tenants of 809 Kennedy St., N.W.*, VA 02-107 (RHC Sept. 27, 2013). Based on the Commission's review of the Motion for Reconsideration, the Tenant is not challenging the dismissal of this issue at this time.

(3) “Petitioner’s repudiation of Final Order claims position;” and (4) “Retaliation.” See generally Notice of Appeal;<sup>3</sup> see Decision and Order at 16-17.

On March 16, 2017, the Tenant filed a “Tenant/Appellant Submission for Reconsideration of Decision and Order of March 2, 2017,” timely requesting reconsideration (“Motion for Reconsideration”). See 14 DCMR § 3823.1.<sup>4</sup> On March 24, 2017, the Tenant also filed an amended version of the Motion for Reconsideration, titled “Tenant/Appellant Submission for Reconsideration of Decision and Order of March 2, 2017 as Amended” (“Amended Motion for Reconsideration”).<sup>5</sup>

## II. DISCUSSION

The Commission is not persuaded that the Amended Motion for Reconsideration presents any authority that requires the Commission to reverse its previous determination on Tenant’s Subpoena Request for the following two reasons.

First, the Tenant cites no legal authority and misstates the Commission’s instructions to OAH concerning the remand. In the Amended Motion for Reconsideration, as amended, the

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<sup>3</sup> The Commission recites the issues as stated in headings used by the Tenant in his Notice of Appeal.

<sup>4</sup> 14 DCMR § 3823.1 provides as follows:

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.

<sup>5</sup> The Commission’s rules ordinarily require a party to request leave of the Commission to file an amendment to a pleading. 14 DCMR § 3815.1 (“Any party may move to request . . . leave to amend a pleading if the motion is served on opposing parties and the Commission”). In the Amended Motion for Reconsideration, the Tenant corrected some general terminology, but other than that the Commission’s review finds no other significant differences between the March 16<sup>th</sup> Motion for Reconsideration and the March 24<sup>th</sup> Amended Motion for Reconsideration.

The Commission is mindful of the important role *pro se* litigants in the enforcement of the Act. See, e.g., Goodman v. D.C. Rental Hous. Comm’n, 573 A.2d 1293, 1298-99 (D.C. 1990); Philip v. Willoughby Real Estate Co., RH-TP-16-30,800 (RHC Aug. 30, 2016). Accordingly, and in light of the limited nature of the corrections in terminology made by the Tenant, the Commission will herein treat the Amended Motion for Reconsideration as the operative motion.

Tenant argues that the Decision and Order “mandated a limit of 3 witnesses, but offered no salient reasons why the 8 witnesses can’t be a part of the [sic] Remand hearing.” See Amended Motion for Reconsideration at 4. As was fully discussed in the Decision and Order, the Commission’s review of the record revealed that no order or ruling was issued by the ALJ on the Tenant’s Motion for Subpoenas and that the record provided the Commission with no findings of fact or conclusions of law on which to base its review. Without such ruling, the Commission was not able to determine whether the decision not to grant the Tenant’s subpoena request was predicated on “some valid ground,” or was otherwise not an abuse of discretion. See 14 DCMR § 3807.1; cf. Bennett v. Fun & Fitness of Silver Hill, Inc., 434 A.2d 476, 478-79 (D.C. 1981) (finding an abuse of discretion where the trial court’s order denying appellant’s motion to amend was “not accompanied by a statement of reasons”); see also D.C. OFFICIAL CODE § 2-509(e); Butler-Truesdale v. Aimco Props., LLC, 945 A.2d 1170, 1171-72 (D.C. 2008) (holding that “[a]gencies are required to make findings upon each contested issue of fact”). In the Decision and Order, the Commission explained that the ALJ’s failure to rule on the Tenant’s subpoena request could not be viewed as harmless because:

It potentially deprived [sic] the Tenant of the opportunity to litigate the relevance of presenting the witness testimony, thereby foreclosing the possibility of obtaining any meaningful review of ALJ’s decision.<sup>6</sup>

Decision and Order at 15.

The Tenant does not argue that the Decision and Order was erroneous with regard to the ALJ’s failure to rule on his subpoena request. Rather, the Tenant contests the Commission’s

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<sup>6</sup> Cf. United Dominion Mgmt. Co. v. D.C. Rental Hous. Comm’n, 101 A.3d 426, 430-31 (D.C. 2014) (Commission error in stating deferential standard of review was harmless where subsequent analysis effectively de novo); Tenants of 1754 Lanier Pl., N.W. v. 1754 Lanier, LLC, RH-SF-15-20,126 (RHC Apr. 26, 2016) (error in misstating necessary factors was harmless where subsequent analysis contained findings of fact and conclusions of law on all necessary issues); Barac Co., VA 02-107 at n.15 (defining “harmless error” as “[a]n error which is trivial . . . and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case”) (quoting BLACK’S LAW DICTIONARY 646 (5th ed. 1975)).

instructions on remand as “mandate[ing] a limit of 3 witnesses” without “offer[ing] any [sic] salient reasons why the 8 witnesses can’t be a part of the [sic] Remand hearing. *See* Amended Motion for Reconsideration at 4.

The Commission determined in its Decision and Order “that it was an abuse of discretion for the ALJ to fail to rule on the Tenant’s Motion for Subpoenas.” Decision and Order at 16. The Commission remanded the matter to “OAH on this issue, with instructions to issue an order ruling on the Tenant’s Motion for Subpoenas in accordance with 1 DCMR §§ 2824 & 2934.” Decision and Order at 16. *See* 14 DCMR § 3807.1; *see also* Dada, 715 A.2d at 908. As further guidance, the Commission instructed the ALJ as follows:

**If the ALJ grants the Tenant’s Motion for Subpoenas with respect to any of the witnesses requested, the Commission further instructs the ALJ to hold an evidentiary hearing limited to the testimony of those witnesses, and to issue new or revised findings of fact and conclusions of law based on such witness testimony as may be presented.**

Decision and Order at 20 (emphasis added). As the Commission explained in its Decision and Order:

**Because Commission’s remand with respect to subpoenas may result in additional evidentiary proceedings leading to new or revised findings of fact and conclusions of law regarding the legal merits of the remaining issues in this appeal. Furthermore, additional legal issues may be raised on appeal in event of further OAH proceedings. In its discretion and in the interests of judicial economy and efficiency, the Commission has determined that all legal issues arising in this appeal will more fully and efficiently be addressed once the OAH record is complete and final.**

Decision and Order at 20 (emphasis added).

Contrary to the Tenant’s contentions, the Commission finds nothing in its instructions on remand that restricts the ALJ’s ability to allow more than three witnesses to present testimony if

the Motion for Subpoenas is granted and an evidentiary hearing is held.<sup>7</sup> Therefore, the Commission is satisfied that the Amended Motion for Reconsideration does not state any basis on which the Decision and Order was erroneous or unlawful under the Act or regulations. *See* 14 DCMR § 3823.2; Douglas v. Dorchester House Assocs., LLC, RH-SF-09-20,098 (RHC Apr. 8, 2015) (Order on Motion to Reconsider Denial of Motion); Watkis v. Farmer, RH-TP-07-29,045 (RHC Aug. 15, 2013) (Order on Motion for Reconsideration) (Commission’s review is limited to evidence in the record); Stone v. Keller, TP 27,033 (RHC Feb. 26, 2009) (Order on Motion for Reconsideration) (denying motion for reconsideration where tenant failed to set forth a specific ground of error or illegality in the Commission’s decision); Byrd v. Reaves, TP 26,195 (RNC Aug. 8, 2002) (Order on Motion for Reconsideration) (tenant did not specifically identify an error or unlawful basis upon which the Commission made its decision as required by 14 DCMR § 3823.2).

Second, the Tenant’s Amended Motion for Reconsideration demands that the Commission order a new evidentiary hearing on the merits as well as a change in venue<sup>8</sup> by raising the same issues that he raised in his April 29, 2015, Notice of Appeal from the original Final Order in this case, Bettis v. Horning Assocs., 2015-DHCD-TP 30,658 (OAH Aug. 2, 2015). *See* Amended Motion for Reconsideration at 3-17. The Tenant provides no legal basis for such requests and fails to set forth grounds which demonstrate that the Decision and Order is erroneous or unlawful. Simply relying on the same issues that the Commission is awaiting to address and arguing that the Decision and Order “failed to persuade the Tenant [sic] that adverse and egregious actions of administrative law judges didn’t filter into the official hearing of March

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<sup>7</sup> The Commission notes the pool of witnesses is limited by the specific witnesses that the Tenant requested in the original Motion for Subpoenas.

<sup>8</sup> In requesting a change of venue, nowhere within the Amended Motion for Reconsideration does the Tenant suggest by what forum he is seeking to have the case heard.

29, 2016,” are insufficient and do not present cognizable grounds, to demonstrate that the Decision and Order is erroneous or unlawful.<sup>9</sup>

Moreover, “[t]he Commission has consistently held that it may not review issues that are raised for the first time on appeal.” Ivancie, RH-TP-07-28,989 (stating that the Commission may not review an issue for the first time on appeal where the tenant failed to raise the issue before the ALJ); *see, e.g.*, Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm’n, 642 A.2d 1282, 1286 (D.C. 1994) (District of Columbia Court of Appeal (“DCCA”) will not entertain contentions not raised before the agency); Tillman v. Reed, RH-TP-08-29,136 (RHC Sept. 18, 2012) (determining that an issue not raised before the ALJ did not constitute a cognizable legal claim on appeal); Smith, RH-TP-06-28,794 at n.13 (noting that the Commission is unable to consider the additional claims raised for the first time in the party’s brief on appeal, where the party failed to raise these claims before the ALJ or in its notice of appeal); Barac Co., VA 02-107 (because housing provider failed to raise issue at RACD hearing, despite being placed on notice of it at that hearing, Commission unable to address it for the first time on appeal); Hawkins v. Jackson, RH-TP-08-29,201 (RHC Aug. 31, 2009) (stating that Commission could not consider factual allegations in support of tenant’s issues on appeal where they had not been raised below); Stone, TP 27,033 (noting that issue that was not raised below could not be raised on appeal).

The Commission’s review of the OAH hearing record does not reveal any evidence that the Tenant properly preserved these issues on appeal. For example, there is no indication in the record that the ALJ was asked by any party below to conduct a new hearing. Moreover, following the issuance of the Final Order, neither party raised this issue by filing a motion

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<sup>9</sup> The Commission observes, additionally, that a “change of venue” is not possible under the Act, where jurisdiction over hearings is vested solely in the Office of Administrative Hearings and the Commission. D.C. OFFICIAL CODE § 2-1831.03(b-1); *see also* Drayton v. Poretzky Mgmt., Inc., 462 A.2d 1115 (D.C. 1983) (administrative agency has primary jurisdiction over rent levels under the Act, and Landlord-Tenant Branch of D.C. Superior Court must stay proceedings while those issues are decided).

seeking a new hearing pursuant to OAH Rules of Practice and Procedure, 1 DCMR § 2828.5,<sup>10</sup> entitled “Requesting Reconsideration, a New Hearing, or Relief from a Final Order.” Because the Commission’s review of the record reveals that the Tenant failed to raise these issues before the ALJ, the Commission may not review these issues for the first time on appeal. *See, e.g., Ivancie*, RH-TP-07-28,989; *Lenkin Co. Mgmt.*, 642 A.2d at 1286; *Morris*, RH-TP-06-28,794; *Barac Co.*, VA 02-107.

### III. CONCLUSION

For the above stated reasons the Commission denies the Amended Motion for Reconsideration of the Commission’s Decision and Order.

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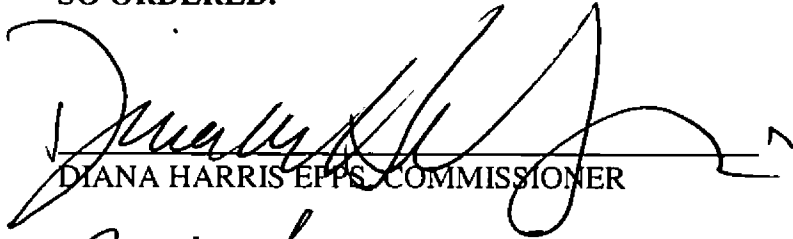
<sup>10</sup> 1 DCMR § 2828.5 provides as follows:

If any party files a motion for reconsideration or for a new hearing before a final order is issued or within the ten (10) calendar day deadline of Subsection 2828.3, and where substantial justice requires, the Administrative Law Judge may change the final order or schedule a new hearing for any reason including, but not limited to, the following:

- (a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
- (b) The party filing the motion did not file a required answer to a Notice of Infraction or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense;
- (c) The final order contains an error of law;
- (d) The final order's findings of fact are not supported by the evidence; or
- (e) New evidence has been discovered that previously was not reasonably available to the party filing the motion.



**SO ORDERED.**



DIANA HARRIS EPPS, COMMISSIONER



MICHAEL T. SPENCER, 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, “[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:

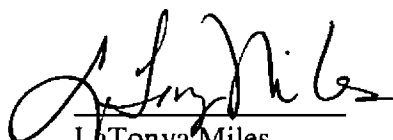
D.C. Court of Appeals  
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(202) 879-2700

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **ORDER ON MOTION FOR RECONSIDERATION** in RH-TP-15-30,658 was served by first-class mail, postage prepaid, on this **31st day of March, 2017**, to:

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