

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

SR 20,076

In re: 5759 Thirteenth Street, N.W.

Ward Four (4)

DOROTHY REID
Tenant/Appellant

v.

GABEN MANAGEMENT L.L.C.
Housing Provider/Appellee

ORDER FOR REMAND

October 24, 2003

BANKS, CHAIRPERSON. On August 28, 2003, the Rent Administrator issued a decision and order on the substantial rehabilitation petition filed by Gaben Management L.L.C. (Gaben), Housing Provider. On September 22, 2003, Dorothy Reid, Tenant, filed a notice of appeal in the Rental Housing Commission. On September 30, 2003, Gaben filed a motion to dismiss the Tenant's appeal, stating it was untimely filed. The motion stated the decision and order stated that notices of appeal must be filed no later than September 17, 2003. The Commission reviewed the decision and order, which stated that motions for reconsideration and appeals must be file stamped with the Housing Regulation Administrator or the Commission no later than September 17, 2003. Decision at 13.

THE COMMISSION'S ORDER

The Rental Housing Act of 1985 provides that appeals may be made to the Commission from the decisions of the Rent Administrator within ten (10) days of the Rent Administrator's decision. D.C. OFFICIAL CODE § 42-3502.16(h) (2001).

The Commission is required by law to dismiss appeals that are untimely filed, because time limits are mandatory and jurisdictional. United States v. Robinson, 361 U.S. 209 (1960); Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, 505 A.2d 1310 (D.C. 1986); Totz v. District of Columbia Rental Hous. Comm'n, 474 A.2d 827 (D.C. 1974). The Commission determines the time period between the issuance of the OAD decision and the filing of the notice of appeal by counting only business days, as required by its rules. See 14 DCMR § 3802.2 (1991); Town Center v. District of Columbia Rental Hous. Comm'n, 496 A.2d 264 (D.C. 1985).

For appeals, the Commission's rules state:

A notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and if the decision is served by mail an additional three (3) days shall be allowed.

14 DCMR § 3802.2 (1991).

The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; Provided that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by §4014.

14 DCMR § 3802.3 (1991).

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

14 DCMR § 3816.3 (1991).

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.

14 DCMR § 3816.5 (1991).

In this appeal, the thirteen business day time period commenced on August 29, 2003, which was the day after the decision was issued and served by mail. The thirteen day period provided in rules, 14 DCMR § § 3802.2-.4; 3816, ended on September 17, 2003, as stated in the decision and order. However, the Tenant/Appellant did not file the notice of appeal in the Commission until September 22, 2003, which was three (3) business days beyond the period provided in the law and the rules. See Jassiem v. The Jonathan Woodner Co., TP 27,348 (RHC June 24, 2002) (where the Commission dismissed an appeal that was filed one day too late).

However, before the Commission dismisses an appeal it must be clear that the Rent Administrator's decision and order was properly served on the parties, and thereby they had notice of the decision or order. The Act requires, "[a] copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties." D.C. OFFICIAL CODE § 42-3502.16 (2001). See Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999). The District of Columbia Administrative Procedure Act (DCAPA) requires, "[a] copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record." D.C. OFFICIAL CODE § 2-509(e) (2001). "[N]otice is consistent with the requirements of fundamental due process [when] the proceeding is one at which legal duties or privileges are to be

adjudicated.” Hotel Assoc. of Washington, D.C. v. District of Columbia Minimum Wage and Industrial Safety Bd., 318 A.2d 294, 305 (D.C. 1974).

In the instant appeal, the Rent Administrator used priority mail with confirmation of delivery. The Commission reviewed the Tenant’s address, 5759 13th Street, N.W., on the tenant petition, with the address, 5759 16th Street, N.W., on the priority mail receipt dated August 28, 2003, which was the date of the Rent Administrator’s decision and order. The incorrect address caused the United States Postal Service (USPS) Track and Confirm on the web to report, “[y]our item was undeliverable as addressed” The Commission holds, an incorrect address and the resulting undelivered mail cannot be used to give notice that the Rent Administrator issued a decision and order, because actual delivery of the decision and order to the correct party did not occur.

Moreover, the Commission cannot use an incorrect address and the USPS Track and Confirm report that the decision was not deliverable, as the basis for dismissal of an appeal. The Track and Confirm report is proof of lack of proper delivery of the Rent Administrator’s decision and order to the Tenant. The Commission also noted the wrong address on the certificate of service in the decision, as well as, the wrong address on the priority mail receipt.

Based on the Commission’s review of the record that the Rent Administrator failed to correctly address the decision and order to the Tenant, and the failure of the USPS to deliver the decision and order to the Tenant, the Commission concludes that the Tenant did not get timely and proper notice that the Rent Administrator issued the decision and order. In addition, the Commission cannot begin the ten (10) day count under its appeal rules, because it does not have a record of the date when the Tenant

received the decision.¹ For these reasons, the motion to dismiss the appeal is denied.

This case is remanded to the Rent Administrator to reissue the decision and order with the correct addresses of the parties and to verify delivery of the decision and order to the parties through the USPS Track and Confirm web site. Any appeal by either party must be filed within the time period stated on the reissued decision and order.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), 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."

¹ The Commission cannot find facts, and must rely on the certified record for its review. See Meir v. Rental Accommodations Commission, 372 A.2d 566 (D.C. 1977).

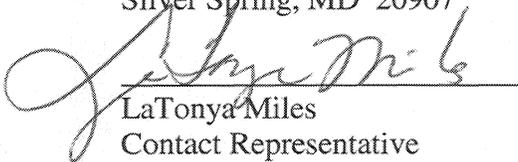
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON REMAND in SR 20,076 was mailed by priority mail, with confirmation of delivery, postage prepaid this 24th day of **October, 2003**, to:

Dorothy Reid
P.O. Box 41389
Washington, D.C. 20011

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Jerry Weinstein
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LaTonya Miles
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