DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,663

In re: 2625 Naylor Road, S.E., Unit 201

Ward 8

CHRISTINE MILLER
Tenant/Appellant

v.

WILLIAM C. SMITH COMPANY
Housing Provider/Appellee

DECISION AND ORDER

April 20, 2001

BANKS, CHAIRPERSON. This appeal is from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission), pursuant to the Rental Housing Act of 1985, "Act," D.C. Law 6-10, D.C. CODE § 45-2501 et seq., and the District of Columbia Administrative Procedure Act (DCAPA), D.C. CODE § 1-1501, et seq. The regulations, 14 DCMR 3800 et seq., also apply.

I. THE PROCEDURES

On February 8, 1999, Christine Miller, the Tenant, filed tenant petition, TP 24,663, pursuant to D.C. CODE § 45-2526(a). The OAD hearing on the petition was scheduled and held on May 6, 1999. On December 16, 1999, OAD Hearing Examiner Gerald Roper issued the first default decision and order on the

tenant petition, because the Housing Provider failed to appear for the hearing. See Miller v. William C. Smith Co., TP 24,663 (OAD Dec. 16, 1999).

The Housing Provider appealed to the Commission, which issued its first decision and order in this case on June 28, 2000. The Commission's decision remanded this case to OAD for a de novo hearing, because the Commission's review of the record showed an incorrect address for the Housing Provider on the OAD hearing notice, and the OAD certified record did not contain proof of delivery by certified mail or other method that assured delivery of the OAD hearing notice to the Housing Provider. See William C. Smith Co. v. Miller, TP 24,663 (RHC June 28, 2000) at 8-11.

On August 10, 2000, OAD issued notices to the parties for the de novo remand hearing scheduled for September 19, 2000. At this second hearing the reverse occurred; the Housing Provider appeared for the hearing, but the Tenant failed to appear. On October 10, 2000, Hearing Examiner Roper issued the second OAD default decision and order, which again dismissed the petition, but due to the Tenant's failure to appear, rather than the Housing Provider's failure to appear. See Miller v. William C. Smith Co., TP 24,663 (OAD Oct. 10, 2000).

On October 26, 2000, the Tenant filed a timely notice of appeal in the Commission, pursuant to 14 DCMR 3802. On December 5, 2000, the Commission issued the hearing notice by certified mail for the scheduled hearing on January 9, 2001. When the Commission's hearing commenced, the Housing Provider's attorney was present, however, the Tenant was not. The Commission waited a few minutes for the Tenant to appear, but she did not. Therefore, the Commission's hearing commenced with only the Housing Provider's attorney present. The Housing Provider's attorney argued on the lack of merits of the Tenant's one appeal issue, which was she did not appear for the OAD hearing, because she did not "recall" receipt of the OAD hearing notice. Notice of Appeal at 1. See also infra p. 7. The attorney for the Housing Provider also requested that the Tenant's appeal be dismissed, due to the absence of the Tenant from the Commission's hearing. The hearing adjourned and the Commission took the appeal under advisement.

The Tenant arrived in the Commission approximately five minutes after the Commission's hearing ended and the Housing Provider's attorney left the Commission. The Housing Provider's office was contacted immediately by the Commission's staff. That office contacted the Housing

Provider's attorney on her cellular telephone. As a result, the Housing Provider's attorney returned to the Commission within a few minutes for further Commission hearing proceedings.

The Commission reopened the hearing with only the Housing Provider's attorney present, as before, to allow the Tenant the opportunity to argue the one issue in her notice of appeal. However, the Tenant refused to enter the Commission's hearing room to argue her one issue on appeal to the Commission. The Chairperson noted on the record the presence of the Tenant in the reception area of the Commission and noted the Tenant's refusal to participate in the Commission's proceedings in the hearing room. The Housing Provider's attorney made similar statements and requested that the appeal be dismissed, or in the alternative, the OAD default decision be affirmed. The Chairperson closed the reopened hearing.

II. PRELIMINARY ISSUE

What is the effect of the Tenant's late arrival and refusal to attend the Commission's reopened hearing, after the conclusion of the oral argument by the attorney for the Housing Provider at the Commission's scheduled hearing?

III. DISCUSSION OF THE PRELIMINARY ISSUE

The Tenant has represented herself, pro se, in this case. The Commission is mindful that pro se litigants may not be aware of the consequences of their conduct, especially when they fail to follow procedures. The Commission understands:

> Many complainants in cases brought under the Act are not affluent, nor are they in a position to afford to retain private counsel to conduct protracted proceedings before the Commission and the courts. … [T]he Act relies largely on lay persons, operating without legal assistance, to initiate and litigate administrative and judicial proceedings.
>
> Although neither this court nor the Commission is authorized to overlook jurisdictional requirements in order to vindicate subjective notions of "fairness," it is appropriate for this court, in resolving procedural issues with respect to which reasonable people might differ, to keep in mind the remedial character of the statute and the important role which lay litigants play in its enforcement. (emphasis added).

Goodman v. District of Columbia Rental Hous. Comm'n, 573 A.2d 1293, 1299 (D.C. 1990). The Commission concludes, after the Tenant appeared late in the Commission,[1] that the Tenant's conduct, of refusal to participate in the Commission's reopened hearing as evinced by her failure to enter the hearing room and to make an oral

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[1] Although not an issue, the Commission complied with D.C. CODE § 45-2526(c), which requires notice of a hearing by certified mail or other method that ensures delivery. The Commission's file contains another Domestic Return Receipt of the United States Postal Service with the Tenant's signature for the certified mail containing notice of the Commission's hearing.

presentation to the Commission on her appeal issue, was tantamount to the filing of a motion to withdraw the appeal. The Commission's rule, 14 DCMR 3824, provides: "An appellant may file a motion to withdraw an appeal…." However, since no motion was actually filed by the Tenant, the Commission will consider the merits of the appeal, in conjunction with the Tenant's conduct. The Commission is also aware that the Tenant's failure to make argument at the hearing may be cause for dismissal of the appeal. Cf. Polinger Shannon & Luchs Co. v. Alpar, TP 24,417 (RHC Nov. 10, 1999) (where the Commission dismissed the appeal due to the failure of the Housing Provider to appear for the Commission's hearing.) That case is distinquishable by the fact that here the Tenant actually appeared, but failed to participate in the hearing by making an argument on her appeal issue.

IV. THE ISSUE ON APPEAL

Whether the Tenant/Appellant was excused from appearing at the OAD remand hearing, because she did not "recall" receiving and signing for the OAD certified mail, which contained the notice of the date, place, and time of the OAD hearing.

V. THE COMMISSION'S DECISION

The Tenant's notice of appeal stated:

> The reason I didn't [sic] get here [OAD] was because I dont [sic] recall of [sic] receiving [sic] a Notice, Simply [sic] because I have a Sister [sic] that I took out of the Nursing [sic] home to care for, and I have no Help [sic] with her yet only a Dr. Crockett. (emphasis added).

Notice of Appeal at 1.

The Tenant's sole issue on appeal is that the default judgment should be reversed, because she did not "recall" receiving, by certified mail, from OAD the notice of the OAD remand hearing scheduled for September 19, 2000 in OAD. However, the OAD certified record contains the Domestic Return Receipt from the United States Postal Service bearing the Tenant's signature for the certified mail, which contained the OAD notice of hearing issued by OAD on August 10, 2000. The notice stated that the OAD remand hearing was scheduled for September 19, 2000. The Postal Service receipt was date stamped back into OAD on August 21, 2000, almost a month before the scheduled OAD remand hearing.

Under Radwan v. District of Columbia Rental Hous. Comm'n, 683 A.2d 478 (D.C. 1996), the Commission must consider the following four factors:

(1) Whether the Tenant received actual notice of the OAD hearing;
(2) Whether the Tenant acted in good faith;

(3) Whether the moving party acted promptly; and
(4) Whether a prima facie adequate defense was presented.

Regarding the first factor, whether the Tenant received actual notice of the OAD remand hearing, the United States Postal Service Domestic Return Receipt bearing the Tenant's signature for the certified mail, which contained the OAD notice of hearing, is substantial evidence in the record that the Tenant received "actual" notice of the OAD remand hearing. OAD met the requirement in the Act, D.C. CODE § 45-2526(c), of providing actual notice of the remand hearing by certified mail. Joyce v. District of Columbia Rental Hous. Comm'n, 741 A.2d 24 (D.C. 1999); Dias v. Perry, TP 24,379 (RHC Dec. 27, 1999).[2] The fact that the Tenant did not "recall" receiving the notice does not excuse her from appearing at the OAD hearing. Notice of appeal, supra, p. 7. All the other Radwan factors, listed above, are moot, due to the Tenant's actual receipt of the notice of the OAD remand hearing.

In addition, the Commission noted that the Tenant's notice of appeal did not allege an error by the hearing examiner in the entry of the default judgment on remand, as

[2] Cited in William C. Smith Co. v. Miller, TP 24,663 (RHC June 28, 2000) (where the Commission held that the Housing Provider did not receive proper notice of the first OAD hearing by certified mail and remanded this case for a de novo hearing).

required by the Commission's rule, 14 DCMR 3802.5, which states:

> The notice of appeal shall contain the following:
> …
>
> (b) … a clear and concise statement of the alleged error(s) in the decision….

Cited in Goff v. The Edward Tiffey Co., TP 24,855 (RHC Dec. 29, 2000) at 28.

VI. CONCLUSION

Accordingly, based on: 1) the Tenant's actual receipt of the OAD certified mail notice of the OAD remand hearing, 2) the Tenant's refusal to participate in the Commission's hearing, and 3) the Tenant's failure to state in the notice of appeal an error related to the entry of OAD remand default judgment, the Tenant's appeal issue is denied and the OAD default judgment entered against the Tenant is affirmed.

SO ORDERED.

RUTH R. BANKS, CHAIRPERSON

RONALD A. YOUNG, COMMISSIONER

JENNIFER M. LONG, COMMISSIONER
Concurring in the Result

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 24,663 was served by certified mail this **20th day of April, 2001** on:

Joann Sgro, Esquire
1750 K Street, N.W.
Suite 800
Washington, D.C. 20006

and

Christine Miller
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LaTonya Miles
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