

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,681 & TP 24,681A

In re: 40 G Street, S.W., Unit 1

Ward Six (6)

DEBORAH A. REDMAN
Tenant/Appellant-Cross Appellee

v.

PHILIP A. GRAHAM
Housing Provider/Appellee-Cross Appellant

**ORDER
DENYING MOTION TO CONTINUE AND
GRANTING MOTION TO DISMISS APPEAL**

April 24, 2003

LONG, COMMISSIONER. This matter is before the Commission on cross appeals from the decision and order that Hearing Examiner McCoy issued on October 4, 2002. In the decision and order, the hearing examiner concluded as a matter of law that the housing provider charged an excessive rent, increased the tenant's rent when there were substantial housing code violations, and retaliated against the tenant. The hearing examiner ordered the housing provider to refund \$44,985.86 to the tenant, rolled the tenant's rent back, and imposed fines for retaliation and other violations of the Act. Each party appealed various aspects of the hearing examiner's decision.

Since the parties filed cross appeals, the Commission scheduled a hearing to enable each party to argue the issues in their respective notices of appeal and respond to the arguments raised by the opponent. In the notice of hearing, the Commission informed the parties that the "failure of either party to appear at the scheduled time [would] not

preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an appellant to appear may result in the dismissal of the party's appeal." Notice of Rescheduled Hearing at 1.

The tenant, who bore the burden of advancing the issues she raised in her appeal, failed to attend the hearing. As a result, the housing provider, through counsel, made a motion to dismiss the tenant's appeal. Following the hearing, the tenant filed a belated motion to continue the hearing. The tenant cited illness as the basis for the continuance.

For the reasons stated herein, the Commission denies the motion to continue the hearing, because the tenant engaged in a course of conduct that undermined her claim of illness. Moreover, when the tenant failed to attend the hearing, she forfeited her right to advance her appeal. Accordingly, the Commission grants the housing provider's motion to dismiss the tenant's appeal, because the tenant failed to attend the hearing and prosecute her appeal.

I. BACKGROUND

The Commission scheduled this matter for a hearing on February 18, 2003. As a result of a snowstorm, the Commission rescheduled the hearing to March 10, 2003. The Commission issued the hearing notice on February 21, 2003 and advised the parties of the new hearing date. The record reflects that the United States Postal Service delivered the hearing notices to the parties' addresses on February 22, 2003.

On February 27, 2003, the tenant filed a motion to consolidate several pending appeals¹ and a three page "Notice (that the Landlord has tacitly conceded retaliation against the Tenant)." On March 4, 2003, the tenant filed an emergency motion for

¹ The housing provider filed an opposition to the tenant's motion to consolidate. On March 7, 2003, the Commission issued an order denying the tenant's motion to consolidate.

recusal of the Commission,² an emergency motion to continue the hearing scheduled for March 10, 2003,³ and two additional notices.⁴

On Friday, March 7, 2003, the tenant called the Commission and spoke, at length, with a member of the Commission's staff. The tenant inquired about the status of the motion for a continuance, the motion for recusal, and the hearing scheduled for March 10, 2003. The Commission's staff person repeatedly advised the tenant that the hearing would be held as scheduled on March 10, 2003. The tenant protested and shared her views concerning the propriety of holding the hearing on March 10, 2003. The staff member conferred with a member of the Commission, and she concluded her conversation with the tenant by advising her that the Commission would hold the hearing as noticed, on March 10, 2003 at 10:30 a.m. On the morning of Monday, March 10, 2003, the tenant telephoned the Commission and indicated she would not attend the hearing because she was ill.

The Commission convened the hearing at 10:30 a.m., on March 10, 2003. The housing provider appeared with counsel. The Commission informed the housing provider that the tenant called, alleged she was ill, and stated that she would not attend the hearing. The housing provider made an oral motion to dismiss the tenant's appeal, because she failed to appear at the hearing and advance the appeal. The Commission

² See Redman v. Graham, TP 24,681 & TP 24,681A (RHC Apr. 21, 2003) (denying the motion to recuse Commissioners Young and Long and granting the motion to recuse Chairperson Banks).

³ The Commission denied the motion to continue the hearing. The tenant did not file the motion five days before the hearing or in sufficient time for the housing provider to file an opposition before the scheduled hearing. See Redman v. Graham, TP 24,681 & 681A (RHC Mar. 25, 2003).

⁴ The tenant filed several notices in which she shared her views on innumerable tangential matters. The notices do not contain an actionable prayer for relief. In most instances, the tenant uses the notice format to improperly interject arguments and new evidence into the record. Since the Commission's review is limited to the record evidence, the Commission will not review, consider, or respond to the notices.

took the motion under advisement, and received oral argument on the issues raised in the housing provider's notice of appeal.

On March 20, 2003, the tenant filed a motion to continue the hearing, which the Commission held on March 10, 2003. The tenant attached a letter from her internist. In the letter, dated March 11, 2003, the tenant's doctor stated that the tenant was unable to attend the hearing, because she was ill.

II. THE LAW

The Commission has repeatedly held that when an appellant fails to appear for a hearing, the Commission may grant the appellee's motion to dismiss the appeal. See Polinger Shannon & Luchs Co. v. Alpar, TP 24,417 (RHC Nov. 10, 1999); Merino v. Tenants of 1433 Spring Road, N.W., HP 20,493 (RHC Mar. 22, 1990); Stewart v. King, TP 12,042 (RHC Sept. 3, 1987); Lyons v. Stewart, TP 11,986 (RHC July 9, 1987); Tenants of 6505-14th St. v. George Borger, Inc., CI 10,094 (RHC Feb. 26, 1986).

In Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000), the Commission dismissed the appeal when neither the housing provider nor his attorney appeared for the hearing. The housing provider appealed the Commission's dismissal to the District of Columbia Court of Appeals (Court). The Court affirmed the dismissal and held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing. Stancil v. District of Columbia Rental Hous. Comm'n, 806 A.2d 622 (D.C. 2002). The Court noted that the Commission does not have a specific regulation that prescribes dismissal when a party fails to attend a hearing. However, the Court recognized that 14 DCMR § 3828.1 (1998) empowers the Commission to rely upon court rules, when the Commission's rules are silent. The regulation provides:

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

14 DCMR § 3828.1, 45 D.C. Reg. 687 (1998). The “court’s Rule 14 [D.C. APP. R. 14] permits dismissal of an appeal ‘for failure to comply with these rules or for any other lawful reason.’ In addition, [its] Rule 13 [D.C. APP. R. 13] authorizes an appellee to file a motion to dismiss whenever an appellant fails to take the necessary steps to comply with the court’s procedural rules.” Stancil, 806 A.2d at 625.

The Commission has carved a narrow exception when a party suffers a legitimate medical emergency on the day of the hearing. John v. Harmony Properties Tenant Assoc., TP 20,948 (RHC Aug. 25, 1989). However, the Commission will dismiss an action when the party engages in conduct that undermines a claim of illness. Sydnor v. Johnson, TP 26,123 (RHC Nov. 1, 2002).

In Sydnor, the housing provider faxed a certificate of election and a housing deficiency report to the agency on the morning of the hearing. Thereafter, she faxed a handwritten emergency request for a continuance. The housing provider indicated that she visited her doctor, on the day before the hearing, and her blood pressure was elevated on the day of the hearing. The tenant, who appeared for the hearing, objected to the housing provider’s request for a continuance. The hearing examiner denied the request for a continuance, because the housing provider’s ability to transmit the housing regulation documents caused the hearing examiner to question whether she suffered a true medical emergency. On appeal, the Commission affirmed the denial of the request for a continuance. The Commission held that the hearing examiner did not abuse his discretion, because “[t]he housing provider’s ability to transmit housing documents on

the hearing day undermined the legitimacy of her claim that she was medically incapacitated.” Sydnor at 11.

III. DISCUSSION

In the instant case, the tenant’s conduct has undermined her claim that she did not attend the Commission’s hearing because she was ill. In the days preceding the hearing, the tenant filed several motions, which sought to delay the hearing for various reasons. On the eve of the hearing, the tenant called the Commission and learned that the Commission would hold the hearing as scheduled. After learning that her requests to delay the hearing were not successful, the tenant stated she could not attend the hearing because she was ill. However, her conduct, while claiming the illness, was inconsistent with her claim.

A. Facts

On Tuesday, March 4, 2003, the tenant filed an emergency motion to reschedule the Commission’s hearing.⁵ The tenant articulated several grounds for the request to reschedule the hearing. The motion to reschedule, and each stated ground for the request, contained an assumption that the Commission would grant the requested relief.⁶

On Friday, March 7, 2003, the tenant called the Commission and spoke to a

⁵ The Commission mailed the notice of hearing on February 21, 2002, and USPS records indicate that it delivered the notice on February 22, 2003. The tenant filed four motions on February 27, 2003. However, she did not elect to file the motion to reschedule the hearing until March 4, 2003.

⁶ “[U]nless the motion has been affirmatively acted upon, the party must be prepared to go forward. A party may not assume that a request for a continuance ... will be automatically granted. Such is not the case. If it were, such motions would become non-discretionary, and the ... Commission would lose all ability to control [its] calendar[].” Wayne Gardens Tenant Assoc. v. H & M Enterprises, TP 11,845 (RHC Sept. 27, 1985) at 4 (footnote omitted).

member of the Commission's staff concerning the status of her motion for continuance⁷ and other pending motions. When advised that the Commission would convene the hearing on March 10, 2003, as scheduled, the tenant expressed her concern with the decision to hold the hearing.

On Monday, March 10, 2003, the tenant called the Commission and stated she was ill. During a lengthy conversation, the tenant inquired about the status of the pending motions, espoused her views on the procedures for continuances, and shared her thoughts on the propriety of holding a hearing when there were outstanding motions. In addition, the tenant stated she would not attend the hearing, because she was ill. She indicated she would contact her doctor and request a note. However, the tenant was certain that she could not secure the doctor's note before the hearing. The tenant asked for the Commission's fax number, and forcefully argued her position on the procedures that she believed the Commission was required to undertake based on her alleged illness. When advised that the Commission would convene the hearing as scheduled, the tenant shared her understanding of the procedures employed by courts when there is an allegation of illness. The tenant offered various strenuous arguments throughout the discussion, articulated her understanding of legal principles, and appeared to be prepared to espouse her views indefinitely.

After the hearing the Commission received a Notice of Illness, by facsimile. The facsimile received by the Commission reflects that Deborah A. Redman transmitted the notice on March 10, 2003 at 10:06 a.m. The notice was typed; it contained the proper

⁷ The Commission denied the motion for continuance, because the tenant did not file the motion five days before the hearing. Moreover, the tenant did not file the motion in sufficient time to allow the housing provider to file an opposition, before the scheduled hearing. See Redman v. Graham, TP 24,681 & 681A (RHC Mar. 25, 2003).

caption of the case, the date, the tenant's signature, name, address, telephone number, and a signed certificate of service. The certificate of service reflects that the tenant faxed a copy of the notice to the housing provider's attorney on March 10, 2003. In the body of the notice, the tenant stated, "the tenant is ill, cannot attend the scheduled hearing in the above-referenced matter, and has contacted her physician to have him provide the Commission with a letter confirming illness." On March 20, 2003, the tenant submitted the doctor's March 11, 2003 correspondence, confirming her illness.

B. Law

In John v. Harmony Properties Tenant Assoc., TP 20,948 (RHC Aug. 25, 1989), the Commission held that a continuance was warranted where the record contained a physician's verification that the party was medically disabled and under a doctor's care on the second day of the hearing. In John, the hearing examiner conducted the hearing on September 27 and October 7. The housing provider and his attorney appeared on the first day of the hearing. On the second day of the hearing, the housing provider's attorney appeared and requested a continuance because of his client's sudden illness. Subsequently, the housing provider submitted documentation showing a medical disability from October 5 through October 15. The housing provider's attendance on the first day of the hearing served as proof that the housing provider intended to participate in the proceedings, and he submitted proof that he was under a doctor's care on the second day of the hearing. The Commission noted that it was "not presented ... with a case of a housing provider's willful or negligent default or failure to defend, either of which might justify refusal ... to reopen the hearing." Id. at 2.

Conversely, in Sydnor v. Johnson, TP 26,123 (Oct. 20, 2000), the Commission affirmed the denial of a continuance, where the housing provider's ability to fax evidentiary documents, on the morning of the hearing, compromised the validity of the alleged illness. In Sydnor, the housing provider alleged she visited her doctor on the day before the hearing, and faxed a handwritten request for a continuance. The housing provider's ability to fax evidentiary documents, shortly before the hearing, undermined the legitimacy of her alleged illness.

C. Analysis

In the instant case, the Commission is confronted with a tenant who employed various unsuccessful means to delay the scheduled hearing. First, she filed a motion to continue the hearing less than five days before the hearing. On the eve of the hearing, the tenant contacted the Commission by telephone and learned that the motion to continue the hearing had not been acted upon by the Commission. On the morning of the hearing, she contacted the Commission and strenuously voiced her concerns. After learning that the Commission intended to hold the scheduled hearing, the tenant faxed a notice of illness, less than thirty minutes before the hearing. The notice was typed, well drafted, and legally sufficient. The tenant's myriad failed efforts to obtain a continuance of the hearing, and her ability to argue her position and fax the notice of illness on the hearing date, undermine her claimed illness. The tenant's conduct, which was far more rigorous than the conduct in Sydnor, yields a similar result.

In John v. Harmony Properties Tenant Assoc., TP 20,948 (RHC Aug. 25, 1989), the Commission held that the housing provider's attendance on the first hearing date manifested his intent to participate in the proceedings. In addition, the Commission was

“not presented ... with a case of a [party’s] willful or negligent default or failure to defend, either of which might justify refusal ... to reopen the hearing.” Id. at 2.

Conversely, the tenant in the instant case engaged in a course of conduct that demonstrated her desire to delay the hearing. After her efforts to secure a continuance failed, she claimed illness. In John, the housing provider submitted proof that he was medically disabled and under his doctor’s care on the hearing date. The tenant, in the instant case, advised the Commission that she would contact her doctor to confirm her illness, after the hearing. The tenant secured the doctor’s note after the hearing, and she belatedly requested a continuance of the hearing.

The tenant bore the burden of advancing the issues she raised in her notice of appeal. Her conduct, in toto, is indicative of the “willful or negligent default or failure to defend, which justif[ies] refusal ... to reopen the hearing.” When the tenant failed to attend the hearing, she forfeited her right to argue and advance her appeal, and she deprived the housing provider of the opportunity to respond to her arguments.

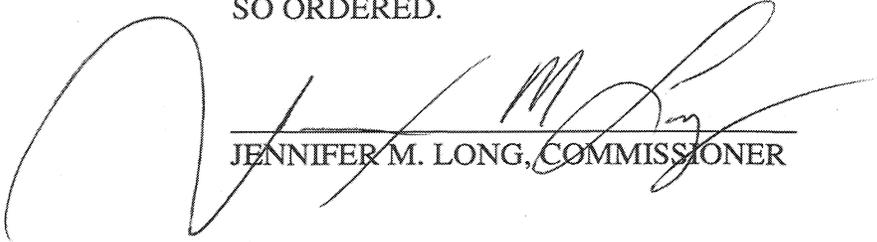
IV. CONCLUSION

For the foregoing reasons, the Commission denies the tenant’s March 20, 2003 request to continue the hearing. The tenant engaged in a course of conduct that undermined the legitimacy of the claimed illness, which served as the basis of the request. Additionally, the motion to continue, which she filed ten days after the hearing, was untimely.

Further, pursuant to Stancil v. District of Columbia Rental Hous. Comm’n, 806 A.2d 622 (D.C. 2002), and D.C. APP. R. 13 and 14, the Commission grants the housing

provider's motion to dismiss the tenant's appeal, because the tenant failed to attend the hearing and prosecute her appeal.

SO ORDERED.



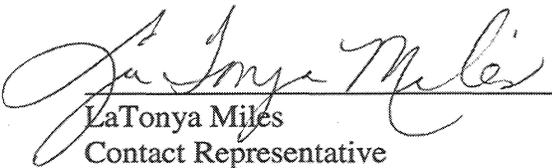
JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order Denying Motion to Continue and Granting Motion to Dismiss Appeal in TP 24,681 & TP 24,681A was sent priority mail with delivery confirmation, postage prepaid, this 24th day of April 2003 to:

Dr. Deborah A. Redman
P.O. Box 70135
Washington, DC 20024

Phillip L. Felts, Esquire
4804 Moorland Lane
Bethesda, MD 20814



LaTonya Miles
Contact Representative