

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,091

In re: 1815 S Street, N.W., Unit 116

Ward Two (2)

HASSAN NEZHADESSIVANDI
Tenant/Appellant

v.

ROBERT AYERS
DBA 1815 S STREET PARTNERSHIP and ALPHA S STREET, LLC¹
Housing Providers/Appellees

DECISION AND ORDER

November 1, 2002

YOUNG, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Office of Adjudication (OAD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

I. PROCEDURAL HISTORY

Hassan Nezhadessivandi, the tenant of unit 116 at the housing accommodation located at 1815 S Street, N.W., filed Tenant Petition (TP) 25,091 with the Rental

¹ The December 18, 2001 decision and order issued by OAD reflects that Alpha S Street, LLC was the housing provider in the instant case. However, the tenant petition filed on September 19, 2000 reflects that Robert Ayers, DBA, 1815 S Street Partnership and Alpha S Street LLC, were named as the housing providers. Accordingly, pursuant to 14 DCMR § 3809.3 (1991) the Commission has added Robert Ayers and the 1815 S Street Partnership on its own initiative.

Accommodations and Conversion Division (RACD) on September 19, 2000. In his petition the tenant alleged that the housing providers, Robert Ayers, doing business as, 1815 S Street Partnership and Alpha S Street, LLC: 1) took a rent increase larger than the amount of increase permitted by the Act; 2) failed to file the proper rent increase forms with RACD; 3) charged rent which exceeded the legally calculated rent ceiling for his unit; 4) filed an improper rent ceiling for his unit with RACD; 5) took a rent increase while his unit was not in substantial compliance with the D.C. Housing Regulations; 6) failed to properly register with the RACD, the building in which his rental unit was located; 7) substantially reduced services and/or facilities provided in connection with his rental unit; and 8) directed retaliatory action against him for exercising his rights in violation of § 502 of the Act.

The record reflects that an Office of Adjudication (OAD) hearing in TP 25,091 was originally scheduled for November 6, 2000. However, on October 30, 2000, counsel for the tenant filed a motion for continuance which was opposed by the housing provider. On December 1, 2000, OAD mailed to the parties, the "Official Notice of Hearing," which rescheduled the hearing to January 12, 2001. The record further reflects that on April 25, 2001, OAD transmitted to the parties an "Official Reschedule [sic] Notice of Hearing" rescheduling the hearing to June 6, 2001. The record reflects that OAD accessed the United States Postal Service (USPS) Internet website that confirmed delivery of the hearing notices to the housing providers and tenant on April 26 and 27, 2001, respectively.

On May 9, 2001, counsel for the tenant filed with OAD a motion for continuance of the June 6, 2001 hearing. In the motion counsel for the tenant stated, "[u]ndersigned

counsel cannot attend a hearing on June 6, 2001, because he has a 9:30 a.m., hearing at 825 North Capitol Street, NE, [sic] #5100.” Attached to the motion was a Notice of Infraction and pre-scheduled hearing notice dated April 25, 2001, from the District of Columbia Department of Health requiring the named respondent’s presence at a hearing scheduled for June 6, 2001 at 9:30 a.m.

OAD did not issue an order in response to the May 9, 2001 motion for continuance submitted by counsel for the tenant. On June 6, 2001 Administrative Law Judge (ALJ) Henry McCoy convened the OAD hearing. The record reflects that present at the OAD hearing were the managing partner of the housing providers, 1815 S Street Partnership and Alpha S Street, LLC, Robert Ayers, and his witness, Bill Wilson. Neither the tenant, Hassan Nezhadessivandi, nor his counsel of record, Morris Battino, Esquire, appeared at the OAD hearing. Because of the tenant’s failure to appear, at the hearing, the housing providers moved that TP 25,091 be dismissed.

On December 18, 2001, the ALJ issued his decision and order. In his decision the ALJ stated, in part:

On May 19, 2001, Petitioner’s counsel filed another motion for continuance for the June 6, 2001 hearing. On June 4, 2001, the Respondent filed a Motion To Apply Statute of Limitations and Dismissal. The undersigned hearing examiner was assigned responsibility for this case on June 4, 2001. A ruling was not made on Petitioner’s May 19th motion prior to the hearing. Neither the Petitioner nor his attorney contacted the Office of Adjudication to inquire as to the status of the motion for continuance and therefore were under an obligation to appear. The Respondent appeared and moved to dismiss for failure to appear. Petitioner’s motion shall be denied and Respondent’s motion shall be granted. (footnote omitted).

Nezhadessivandi v. Alpha S Street, LLC, TP 25,091 (OAD Dec. 18, 2001) at 2.

II. PRELIMINARY ISSUE ON APPEAL

On January 22, 2002, the tenant filed "Tenant/Appellant's Second Notice of Appeal," which appealed to the Commission an Order on Motion for Reconsideration issued by OAD on January 11, 2002.

The Commission reviewed the tenant's appeal submitted on January 22, 2002, and determined that it was an appeal from an order issued by ALJ McCoy in response to the tenant's December 27, 2001, Motion for Reconsideration of the OAD decision in Nezhadessivandi v. Alpha S Street, LLC, TP 25,091 (OAD Dec. 18, 2001). The Commission determined that the appeal is based upon the order in Nezhadessivandi v. Alpha S Street, LLC, TP 25,091 (OAD Jan. 11, 2002), denying the motion for reconsideration.

Pursuant to the Commission's regulations at 14 DCMR § 4013.3 (1991), "the denial of a motion for reconsideration shall not be subject to reconsideration or appeal." Therefore, the order issued by the ALJ on reconsideration in Nezhadessivandi v. Alpha S Street, LLC, TP 25,091 (OAD Jan. 11, 2002), is not an appealable order. Accordingly, the Commission, based on the regulation, 14 DCMR § 4013.3 (1991), lacks jurisdiction to consider this appeal and it is dismissed.

III. ISSUE ON APPEAL

In a timely filed notice of appeal dated January 11, 2002, the tenant stated in part:

- (c) Appellant alleges the following errors by the Hearing Examiner:
1. Pursuant to 14 D.C.M.R. 4013.1 (a). [sic] A [sic] default judgment was entered because of non-appearance by Appellant and/or his counsel.
 2. Non-appearance occurred because a written motion for continuance was filed and not opposed in writing by the Housing

Provider/Appellee. Appellant's counsel telephoned the OAD office and was informed, orally by an employee of the RACD/OAD, Ms. Stacy Washington, that the Motion for Continuance had been granted, and neither Appellant nor his counsel need appear.

Notice of Appeal at 2. Attached to the tenant's Notice of Appeal was the affidavit of tenant's counsel, Morris R. Battino. Attorney Battino's affidavit stated, in part:

4. That on May 9, 2001, I filed a motion to continue the June 6, 2001 Hearing in this case due to a calendar conflict.
5. That to the best of my knowledge, Respondent never filed a written opposition to the May 9, 2001 motion.
6. That I called this agency on several days and times to determine the status of my above-noted motion.
7. That on June 5, 2001 at 4:00 p.m., I spoke with Stacy Washington by telephone, who informed me that the continuance had been granted, and I need not appear on June 6, 2001.
8. That after June 6, 2001, I filed two (2) separate oppositions, to two separate motions filed by Respondent.
9. That neither my client nor I intended to default on the tenant petition.

Affidavit of Morris R. Battino at 1-2.

IV. DISCUSSION OF THE ISSUES

Whether the ALJ erred when he failed to respond to the tenant's timely filed Motion for Continuance.²

The regulation applicable to motions for continuance, 14 DCMR § 4008.6 (1991), provides, in part: "A party may file a motion to continue or reschedule a hearing for good cause with the hearing examiner provided the motion is served on opposing parties and the hearing examiner at least five (5) days before the hearing." The regulations at 14

² In his Notice of Appeal the tenant did not raise this issue. Rather, by implication, he raised the issue of promissory estoppel. However, the Commission's rule, 14 DCMR § 3807.4 (1991) provides: "Review by the Commission shall be limited to the issues raised in the notice of appeal; Provided, that the Commission may correct plain error."

DCMR § 4008.5 (1991) provide: “The hearing examiner shall render a decision in writing on each motion made which shall include the reasons for the ruling.”

In his decision and order the ALJ stated:

On May 19, 2001, Petitioner’s counsel filed another motion for continuance for the June 6, 2001 hearing. ... The undersigned hearing examiner was assigned responsibility for this case on June 4, 2001. A ruling was not made on Petitioner’s May 19th motion prior to the hearing. (footnote omitted) (emphasis added).

Nezhadessivandi v. Alpha S Street, LLC, TP 25,091 (OAD Dec. 18, 2001) at 2.

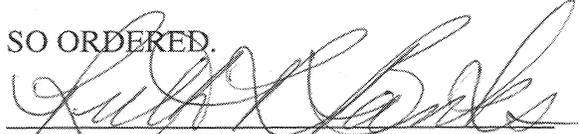
In the instant case the tenant requested, by motion, a decision from the ALJ continuing the June 6, 2001 OAD hearing. As stated by the ALJ in his December 18, 2001 decision, the tenant complied with the regulations and submitted his motion on May 19, 2001, more than five (5) days before the hearing. While the ALJ was not assigned responsibility for this case until June 4, 2001, that fact did not vitiate the obligation of the agency to comply with its rules. Therefore, the ALJ was required to follow the dictates of 14 DCMR § 4008.5 (1991) and issue a written order on the motion for continuance. Therefore, the ALJ’s failure to issue a written order pursuant to 14 DCMR § 4008.5 (1991) was plain error.

V. CONCLUSION

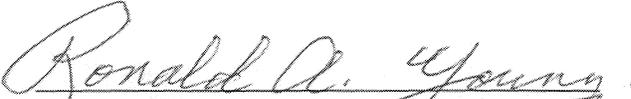
The Commission holds that the ALJ erred when he failed to respond, in writing, to the tenant’s motion for continuance after the tenant complied with the regulations by

submitting his request more than five (5) days before the scheduled hearing. In the instant case, the ALJ was required to follow the procedure set out in the regulations at 14 DCMR § 4008.5 (1991); his failure to do so requires that his decision be reversed and the case be remanded to OAD for a hearing de novo.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER
JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing DECISION and ORDER in TP 25,091 was sent by priority mail, with delivery confirmation, postage prepaid, this **1st day of November, 2002** to:

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