

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 25,092

In re: 1801 16th Street, N.W.

Ward Two (2)

PINNACLE REALTY MANAGEMENT COMPANY
Housing Provider/Appellant

v.

JAMES VOLTZ
Tenant/Appellee

**ORDER ON MOTION OF THE SOMERSET TENANTS ASSOCIATION
FOR LEAVE TO APPEAL AS AMICUS CURIAE**

June 9, 2003

BANKS, CHAIRPERSON. On November 27, 2002, the Somerset Tenants Association filed a motion to appear as amicus curiae, on behalf of the tenants residing at the housing accommodation, and stated that James Voltz, Tenant, was one of the association's members. Motion at 1. The motion also stated that the interest of the tenant association was to respond to the removal of several amenities, including the roof deck, which is the subject of the instant appeal. Id.

The first position of the tenant's association in the motion was that the statute of limitations, D.C. OFFICIAL CODE § 42-3502.06 (2001), began to run when Pinnacle, the Housing Provider, announced in the memorandum dated June 28, 1998 and published to the tenants that the roof deck would not be restored. Second, the tenants association's position on fines was that the claim made in the amicus curiae brief of the Apartment and Office Building Association (AOBA),¹ that the hearing examiner ignored the element of

¹ On December 2, 2002, the Commission granted AOBA's motion to file amicus curiae brief.

willful misconduct in D.C. OFFICIAL CODE § 42-3509.01(b) (2001), was not supported by the evidence that Pinnacle knowingly removed the amenity of the roof deck and willfully continued to collect rents as if it existed, without a reduction in rent. Motion at 2. Third, the tenant association objected to the consideration of other cases mentioned by AOBA in its amicus curiae brief, because those cases were unrelated to the instant appeal, and each appeal should be considered on its own merits. Motion at 3.

On December 6, 2002, the Housing Provider, Pinnacle, filed an opposition to the tenant association's motion, which stated that the Commission should deny the motion or condition the granting of the motion on the production of evidence that the tenant association does exist, the identity and signatures of the members, and that the tenant association authorized the filing of the motion for leave to appear as amicus curiae. The opposition also noted the present case has an issue related to the statute of limitations, which is of paramount importance to the resolution of the instant appeal, and which makes it different from the fact pattern in Marsh v. Pinnacle Realty Mgmt. Co., TP 24,827 (RHC September 7, 2000), where there was no issue of the statute of limitations.

On December 10, 2002, the Commission served notice on the parties of its hearing scheduled for February 20, 2003. At the hearing, James Voltz, the Tenant, inquired about the tenant association's motion for leave to file an amicus curiae brief. Pinnacle's counsel argued against the tenant association's motion. The Commission ruled that Voltz would be allowed to refer to the tenant association's amicus curiae brief, and that the Housing Provider's counsel could file later any appropriate motion.²

² The Housing Provider's counsel later filed on February 24, 2003, a motion to strike the brief of the tenant association.

THE COMMISSION'S ORDER

The Housing Provider urged the Commission to require the tenants, who filed the amicus curiae brief, to identify themselves, show the tenant association exists, and show that the tenant association authorized the filing of the motion, citing 14 DCMR § 3812.3 (1991), which requires, “[a]ny person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.” That position appears to be reasonable considering the late entry of the tenant association into this appeal, rather than at the hearing before the Rent Administrator.

In addition, the Housing Provider’s response cited 14 DCMR § 3904.2 (1991), which requires, “[i]f a tenant association seeks to be a party, the hearing examiner shall determine the identity and number of tenants who are represented by the association.” This rule does not apply to the instant motion, since the tenant association does not seek to be a party, only to file an amicus curiae brief, which does not make them a party.³

When the Commission considered whether to allow AOBA to file an amicus curiae brief, it referred to the rules of the District of Columbia Court of Appeals for guidance and stated: “The Commission does not have a rule for amicus curiae briefs. However, when the Commission’s rules are silent on a procedural issue, the Commission refers to the rules of the District of Columbia Court of Appeals (DCCA) for guidance. [citation omitted.] The DCCA rule, D.C. Ct. App. R. 29, ... requires the identity of the interest of

³ See Dorchester Hous. Tenants Assoc. v. Dorchester Hous. Assoc., CI 20,758 (RHC May 30, 2003), (where the Commission denied a motion to dismiss the appeal, because the housing provider did not file a notice of appeal raising issues related to the existence of the tenant association, which appeared in the Rent Administrator’s hearing below.) The instant appeal is distinguished from Dorchester, because the tenant association in the instant appeal did not appear at the Rent Administrator’s hearing below, and therefore, the Housing Provider did not have an opportunity to object to its participation in the administrative process until the tenant association filed its motion to file an amicus curiae brief on appeal.

the applicant and the reasons why a brief of an amicus curiae is desirable.” Pinnacle Realty Mgmt. Co. v. Voltz, TP 25,092 (RHC Dec. 2, 2002) at 4. The tenant association met that requirement by stating its interest was the discontinuance of the roof deck, an amenity for which the tenants paid rent. Moreover, the tenant association offered a reason to affirm the fine against Pinnacle.

Therefore, pursuant to 14 DCMR § 3812.3 (1991), the tenant association is required by July 7, 2003 to submit to the Commission, documentation of its existence, documentation of the identity of its members at the time the tenant association’s motion was filed, and submit documentation of the authorization for Voltz to represent the tenant association.

SO ORDERED.

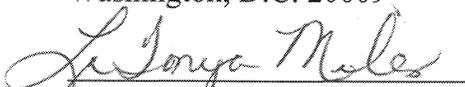

RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing ORDER ON MOTION OF THE SOMMERSET TENANTS ASSOCIATION FOR LEAVE TO APPEAL AS AMICUS CURIAE in TP 25,092 was mailed by priority mail, with confirmation of delivery, postage prepaid this 9th day of June, 2003, to:

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