

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,104

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

Ward Six (6)

DEBORAH A. REDMAN
Tenant/Appellant

v.

PHILIP A. GRAHAM
Housing Provider /Appellee

DECISION AND ORDER

January 31, 2003

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

Deborah A. Redman, the tenant/appellant, filed Tenant Petition (TP) 27,104, with the Rental Accommodations and Conversion Division (RACD), on May 9, 2001. In her petition Ms. Redman, who occupies the downstairs unit at the 2-unit housing accommodation at 40 G Street, S.W., alleged that Philip A. Graham, the housing provider/appellee: 1) in violation of section 502 of the Act, directed retaliatory action

against her for exercising her rights; and 2) served on her a Notice to Vacate which violated the requirements of section 501 of the Act.

An Office of Adjudication (OAD) hearing on the petition was held on October 1, 2001. Administrative Law Judge (ALJ) Lennox Simon conducted the OAD hearing. The ALJ's decision and order was issued on April 10, 2002. In his decision, the ALJ dismissed with prejudice TP 27,104, after concluding as a matter of law:

1. The Petitioner has failed to prove, by a preponderance of the evidence that the Respondent has retaliated against her, in violation of D.C. [Official] Code Section 42-3505.02.
2. The Petitioner has failed to prove, by a preponderance of the evidence, that the Respondent has served an illegal or invalid Notice to Vacate on her, in violation of D.C. [Official] Code Section 42-3505.01(a).

Redman v. Graham, TP 27,104 (OAD Apr. 10, 2002) at 7. The tenant filed a timely notice of appeal in the Commission from the April 10, 2002, OAD decision.

II. ISSUES ON APPEAL

In her notice of appeal, the tenant argued:

1. TP-27,104 should never have been heard as an independent tenant petition because it is obviously integrally connected to Tenant's other 2 cases—TP-24,681 and TP-24,681-A—and was marked as linked by the Tenant on the bottom of the cover page. The Tenant Petitioner's case should not be prejudiced because of Agency administrative error (i.e., Hearing Examiner Word's retirement without fully hearing the matter, after which TP-27,104 was not linked to the other 2 petitions in the subsequent chaos).
2. The Hearing Examiner discriminated against the disabled Tenant and refused to withdraw from the matter after Tenant filed a timely Motion Requesting the Hearing Examiner Withdraw.
3. The Hearing Examiner abused his discretion and made numerous erroneous findings inconsistent with the law, facts, and pleadings and documents submitted to the Rent Administration, the most obvious of which was a failure to find retaliation from the facts presented at the hearing.

Notice of Appeal at 1.

III. DISCUSSION OF THE DISPOSITIVE ISSUE

Whether the hearing examiner erred when he failed to rule upon the tenant's motion requesting his withdrawal.

In her notice of appeal the tenant stated:

The Hearing Examiner discriminated against the disabled Tenant and refused to withdraw from the matter after Tenant filed a timely Motion Requesting the Hearing Examiner [to] Withdraw.

Id.

By motion dated October 9, 2001, eight (8) days after the October 1, 2001 OAD hearing, the tenant moved for the withdrawal of the hearing examiner. The motion stated as grounds for the request that "at the October 1st hearing [the ALJ] displayed a discriminatory animus towards the disabled and bias against the Tenant and toward the Landlord and failed to conduct [the] proceedings in accordance with the law." Tenant's Motion Requesting the Hearing Examiner Withdraw at 1. The tenant, in an attached memorandum of points and authorities, described specific examples of the conduct by the ALJ which she considered discriminatory.

The withdrawal of a hearing examiner is pursuant to the regulations governing the disqualification of hearing examiners. The regulations provide:

Any party may file a motion with the hearing examiner requesting a hearing examiner to withdraw from a proceeding or hearing on the basis of conflict of interest or other disqualification.

14 DCMR § 4001.1 (1991).

The hearing examiner shall rule on the motion within three (3) days of the filing of the motion.

14 DCMR § 4001.2 (1991).

Denials of motions filed pursuant to § 4001.2 may be reviewed by the Rent Administrator upon request of the moving party and rulings by the Rent Administrator shall be issued within three (3) days of the request for review.

14 DCMR § 4001.3 (1991). The certified record for this appeal does not contain a written order in response to the tenant's October 9, 2001 motion for withdrawal or disqualification of the hearing examiner within three days of its receipt or at any time prior to the appeal to the Commission. The applicable regulation, 14 DCMR § 4001.2 (1991), requires that the hearing examiner rule on the tenant's motion within three (3) days of its filing. The Commission has previously held that the regulations requiring responses to timely filed motions by the parties must be adhered to by the ALJ. See Nezhadessivandi v. Alpha S St., LLC, TP 25,091 (RHC Jan. 16, 2003).

IV. CONCLUSION

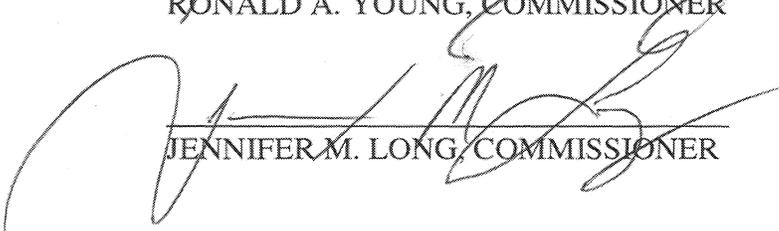
Due to the ALJ's failure to rule on the tenant's motion for his withdrawal or disqualification, the Commission remands this case to OAD for the limited purpose of a ruling on the motion. Accordingly, this case is remanded to the ALJ for a ruling on the tenant's motion for withdrawal. The ALJ is instructed to decide the tenant's motion for disqualification, on the present record, in accordance with the provisions of 14 DCMR § 4001 (1991). See Parkwell Assocs. v. Bikoy, TP 24,383 (RHC Dec. 30, 1999) (where the Commission remanded a decision to the Rent Administrator for a response to a motion for disqualification filed pursuant to 14 DCMR § 4001 (1991)). The tenant's remaining appeal issues are stayed pending the ALJ's decision on the motion. After a ruling on the motion and a review of the ruling by the Rent Administrator, if any, the ALJ

is directed to certify and transmit the OAD record, including his order in response to the motion, to the Commission for further processing of the appeal. See Baxter v. Jackson, TP 24,370 (RHC Dec. 24, 1998).

SO ORDERED.


RUTH R. BANKS, CHAIRPERSON


RONALD A. YOUNG, COMMISSIONER

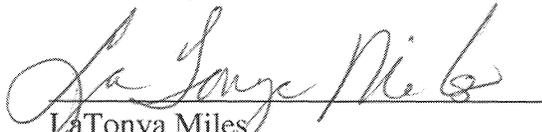

JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing decision and order in TP 27,104 was served by priority mail, with delivery confirmation on this **31st day of January, 2003** to:

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LaTonya Miles
Contact Representative