

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,294

In re: 2480 16<sup>th</sup> Street, N.W., Unit 234

Ward One (1)

**CAMPBELL JOHNSON, III**  
Tenant/Appellant

v.

**MPM MANAGEMENT, INC.**  
Housing Provider/Appellee

**DECISION AND ORDER**

**August 9, 2002**

**PER CURIAM:** This case is on appeal to the District of Columbia Rental Housing Commission from the Rent Administrator's decision in Tenant Petition (TP) 27,294. The tenant filed the appeal pursuant to the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE § 42-3501.01-3509.07 (2001). The Act, the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501-510 (2001), and Title 14 of the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) govern these proceedings.

**I. PROCEDURAL HISTORY**

Campbell Johnson, III, the tenant-appellant, filed Tenant Petition (TP) 27,294 with the Rental Accommodation and Conversion Division (RACD) on September 10, 2001. In the petition, the tenant alleged:

- 1) The rent increase was larger than the amount of increase which was allowed by any applicable provision of the Rental Housing Emergency Act of 1985;

- 2) A rent increase was taken while [the] unit was not in substantial compliance with the D.C. Housing Regulations;
- 3) Services and/or facilities provided in connection with the rental of [the] unit have been permanently eliminated;
- 4) Services and facilities provided in connection with the rental of [the] unit have been substantially reduced;
- 5) Retaliatory action has been directed against [the tenant] by [the] housing provider, manager or other agent for exercising [his] rights in violation of section 502 of the Rental Housing Emergency Act of 1985;
- 6) A Notice to Vacate has been served on [the tenant] which violates the requirements of section 501 of the Act; and
- 7) The housing provider, manager or other agent of the Housing Provider of [the] rental unit have violated the provisions of Section (to be furnished at hearing) [sic] of the Rental Housing Emergency Act of 1985.

Tenant Petition at 3-5.

On March 25, 2002, an Office of Adjudication (OAD) hearing was conducted with Administrative Law Judge (ALJ) Henry McCoy presiding. Present at the hearing were counsel for the housing provider, Phillip Felts, the resident manager of the rental accommodation, Carolyn Bernier, and the chief engineer of the rental accommodation, Ramon Wye. The tenant did not appear. The ALJ decided to reschedule the hearing because he was unable to confirm delivery of the hearing notice to the tenant.

On April 16, 2002, the OAD held the rescheduled hearing with ALJ McCoy presiding. Present at the hearing were the tenant, Campbell Johnson, III, counsel for the housing provider, Phillip Felts and the property manager for the housing accommodation, Peter Fortnier. As a preliminary matter, the tenant moved for a continuance due to a scheduling conflict. The tenant was scheduled to be at another OAD hearing. Counsel for the housing provider stated that he and counsel for the tenant spoke at length about

the conflict. Therefore, he did not have any objections to a continuance. The ALJ granted the motion for continuance to a date to be determined by the availability of all parties.

On May 29, 2002, the ALJ convened the rescheduled hearing. Present at the hearing were the tenant, Mr. Johnson, counsel for the tenant, Mr. Bernard Gray, Sr., counsel for the housing provider, Mr. Phillip Felts, the resident manager of the housing accommodation, Carolyn Burnier, and the chief engineer of the housing accommodation, Ramon Wye.

As a preliminary matter, counsel for the tenant moved for a continuance because he was unable to present his case. Counsel for the tenant stated that he needed additional time to locate documents that were necessary to the tenant's case. Counsel for the housing provider stated that he had no objections to the motion. The ALJ advised the parties that if the matter was rescheduled, it would be for a date after October 1, 2002. The parties consented and the ALJ granted the motion for a continuance to a date to be determined.

On May 31, 2002, the ALJ issued a written decision and order in this appeal reversing his May 29, 2002 ruling at the OAD hearing, which granted the tenant's motion for continuance. On June 19, 2002, the tenant filed a timely appeal with the Commission.

## **II. ISSUES ON APPEAL**

In the notice of appeal, the tenant challenged the ALJ's decision and order denying the motion for a continuance. First, counsel for the tenant argued that the ALJ erred by reversing his prior ruling granting the continuance without giving the parties an opportunity to comment, pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509 (2001).

Secondly, counsel stated that the evidence in the record did not support the conclusions stated by the ALJ for reversal.

### III. DISCUSSION OF THE CASE

#### A. Whether the ALJ violated the DCAPA, D.C. OFFICIAL CODE § 2-509 (2001), when he failed to provide the parties an opportunity to comment before denying the motion for continuance.

In the notice of appeal, counsel for the tenant assigns error to the ALJ for denying the motion for continuance, because counsel contends, the ALJ violated the DCAPA, D.C. OFFICIAL CODE § 2-509 (2001). Counsel for the tenant states:

Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary. In this case neither party was given an opportunity to comment on the grounds for the reason for the reversal.

Notice of Appeal at 1.

Pursuant to 14 DCMR § 3802.5(b)<sup>1</sup>, a party filing a notice of appeal must provide the Commission with a clear and concise statement of the alleged errors in the decision of the Rent Administrator. The tenant in the instant case has failed to provide a clear and concise statement showing that the decision and order of the ALJ violated the “official notice,” provision of the DCAPA. The May 31, 2002 decision of the ALJ did not rest on a material fact not appearing in the record. Accordingly, this issue as raised by counsel for the tenant is dismissed.

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<sup>1</sup> 14 DCMR § 3802.5(b) provides:

The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator’s decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator.

**B. Whether the evidence in the record supports the ALJ's decision to reverse the ruling made to grant the motion for continuance made at the hearing.**

In the notice of appeal, counsel for the tenant asserts that the evidence in the record does not support the conclusions stated by the ALJ for reversal and thus requests that the Commission reverse the decision and order of the ALJ and remand the petition for a hearing. The notice of appeal states:

The [ALJ] conclu[d]es it is in the interest of all parties to reverse. Yet, the [tenant] is subject to suffer extreme prejudice because of the statute of limitations. The [ALJ] conclu[d]es reversal will conserve judicial resources. Yet it will require additional paper work, a new file ect [sic] and man power to process a new Petition.

Notice of Appeal at 2.

Alternatively, in the May 31, 2002, decision and order, the ALJ states:

[T]he instant petition was filed in September 2001 and scheduled for an initial hearing in March 2002. This length of time plus two continuances has provided the Petitioner with more than enough time to search for any and all documents necessary to put forth his case. After further consideration and in the interest of justice to all parties and the conservation of judicial resources, the ruling on the record granting [the tenant's] motion for a continuance is reversed and is now denied. The tenant petition will be dismissed without prejudice to allow [the tenant] the opportunity to refile his tenant petition when he has the documents he deems necessary to prevail on the merits.

Johnson v. MPM Mgmt. Inc., TP 27,294 (OAD May 13, 2002) at 2.

After a review of the record, the Commission agrees with counsel for the tenant. The evidence in the record does not support the conclusions stated by the ALJ for reversal. The record indicates that when counsel for the tenant moved for continuance at the hearing and counsel for the housing provider did not object, the ALJ granted the motion for continuance. Additionally, the record shows that the ALJ advised the parties that a notice indicating the date of the rescheduled hearing would be mailed to each party. Consequently, the Commission holds that the evidence in the record indicates that the

motion for continuance was granted. Furthermore, the Commission holds that the record does not indicate a sufficient reason for a reversal of the ruling at the hearing granting the motion for continuance. Pursuant to 14 DCMR § 3807.1, “the Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion.” The ALJ’s reversal of the ruling at the OAD hearing that granted the motion for continuance was arbitrary, capricious and an abuse of discretion. Accordingly, the ALJ’s decision and order reversing the ruling to grant the tenant’s motion for continuance was error.

The Commission has previously held that an ALJ is estopped from initially granting at a hearing a motion made by a party, and then later reversing his ruling, where the parties relied upon the ruling. See Tenants of 1528-30 34<sup>th</sup> St. N.W. v. Garber, HP 20,733-34 (RHC Dec. 14, 1993) (which held that the hearing examiner is estopped from granting the tenants the right to file comments on a specific date, only to then close the record prior to the date given to the tenants). Thus, the Commission holds that the ALJ erred because he was estopped, after he granted the motion for continuance at the hearing, from reversing that ruling in his written decision pursuant to the legal principle of promissory estoppel.

The District of Columbia Court of Appeals (DCCA) has recognized this principle of law and stated:

In order to establish promissory estoppel against the government, the party asserting the estoppel must show that the government ‘made a promise, that [the party] suffered injury due to reasonable reliance on the promise and that enforcement of the promise would be in the public interest and would prevent injustice.

Georgetown Entm’t Corp. v. District of Columbia, 496 A.2d 587,592 (D.C. 1985), citing

District of Columbia v. McGregor Prop. Inc., 479 A.2d 1270,1273 (D.C. 1984).

In this case, the ALJ granted the tenant's motion for continuance at the OAD hearing and stated that the hearing would be rescheduled for a date after October 1, 2002, which allowed the tenant additional time to locate documents pertinent to his case.

When the motion for continuance was later denied, the ALJ concluded that he did so without prejudice to allow the tenant to refile the petition. However, the ALJ's denial of the motion for continuance and dismissal of the petition unduly prejudices the tenant. The Act, D.C. OFFICIAL CODE § 42-3502.06(e) states in pertinent part, "[n]o petition may be filed with respect to any section of this chapter more than three years after the effective date of the adjustments." The tenant filed TP 27,294 on September 10, 2001. Consequently, the statutory period of the tenant petition was from September 10, 1998 to September 10, 2001. The dismissal of this petition causes the tenant to be precluded from referring to instances that date more than three years prior to the date a new petition is filed. See Kennedy v. District of Columbia Rental Hous. Comm'n., 709 A.2d 94 (D.C. 1998) (which held that the statute of limitations bars any investigation into the validity of either rent levels or rent ceilings implemented more than three years prior to the date the tenant filed the petition). Therefore, the ALJ's decision reversing his ruling at the OAD hearing is prejudicial because it changes the period, which is subject to review in the tenant's petition.

Moreover, the ALJ's decision and order abridges the tenant's due process rights because the tenant relied upon the ruling of the ALJ granting the motion for continuance. Counsel for the tenant did not present his case because the ALJ ruled at the OAD hearing that there would be another opportunity to present evidence. The tenant is entitled to an

opportunity to present his case before the agency. Therefore enforcement, of the ALJ's decision to grant the motion for continuance is in the public interest and prevents an injustice.

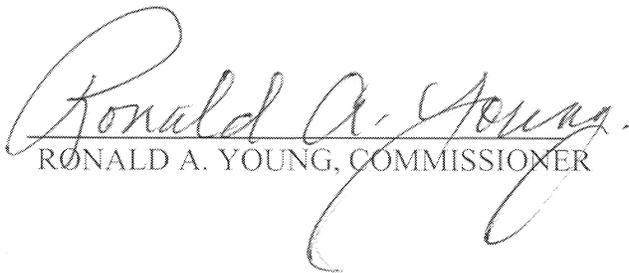
**IV. CONCLUSION**

The ALJ erred when he reversed his ruling to grant the tenant's motion for continuance. "The tenant had the right to rely on the extension of time granted by the [ALJ]. [Only] enforcement of the [ALJ's] promise prevents any injustice to the tenant." Tenants of 1528-30 34<sup>th</sup> St. N.W. v. Garber, HP 20,733-34 (RHC Dec. 14, 1993).

Accordingly, the Commission reverses the decision and order of the ALJ and remands this matter to OAD for a hearing de novo.

SO ORDERED.

  
RUTH R. BANKS, CHAIRPERSON

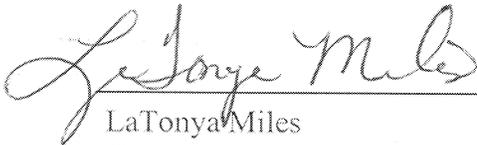
  
RONALD A. YOUNG, COMMISSIONER

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,294 was mailed by priority mail with delivery confirmation postage prepaid, this 9<sup>th</sup> day of August, 2002 to:

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