

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,478

In re: 617 Hamlin Street, N.E., Unit 1

Ward Five (5)

MARSHAN JEFFERSON
Tenant/Appellant

v.

HERCULES REAL ESTATE, INC.
Housing Provider/Appellee

ORDER ON MOTION FOR LEAVE TO FILE BRIEF OUT OF TIME

December 6, 2002

BANKS, CHAIRPERSON. On September 9, 2002, the Commission issued its Notice of Scheduled Hearing on Appeal and Notice of Certification of Record, which advised the parties that the Commission scheduled the hearing for November 12, 2002, and that briefs were due to be filed, pursuant to 14 DCMR § 3802 (1991), which provides for filing of briefs within five (5) days of receipt of the notice. The Commission's records show that Tenant's counsel received the notice on September 10, 2002.

On the day of the hearing, Tenant's counsel filed in the Commission the "Motion for Leave to File Brief for Petitioner Out of Time and Memorandum of Points and Authorities," and "Supplement [sic] Brief for Petitioner." The Commission addressed the motion as a preliminary matter at its hearing. The conclusion was that the Housing Provider/Appellee was granted ten (10) days, until November 26, 2002, to file an opposition to the motion and to file an opposing brief. The Housing Provider's counsel did not file an opposition nor an opposing brief.

THE COMMISSION'S ORDER

The Commission recently ruled on a similar issue in Nezhadessivandi v. Ayers, TP 25,091 (RHC May 28, 2002), (where the Commission addressed the factors to be considered for an extension of time):

The decision on a motion for extension of time or a continuance is submitted to the sound discretion of the Commission, and is reviewed by an appellate court for abuse of discretion. See Metropolitan Baptist Church v. District of Columbia Department of Consumer and Regulatory Affairs, 718 A.2d 119 (D.C. 1998). The factors to be considered are: 1) the reasons for the continuance (or extension of time, as in this case), 2) the prejudice resulting from the denial, 3) the party's diligence in seeking relief, 4) any lack of good faith, 5) and prejudice to the opposing party. Daley v. United States, 739 A.2d 814 (D.C. 1999).

Nezhadessivandi at 5, cited in Bedell v. Clark, TP 24,979 (RHC Aug. 14, 2002).

The reason for the extension of time in the instant motion was counsel's busy schedule with multiple court obligations for many clients, and supervision of law students. That factor is similar to the reason for late filing in Nezhadessivandi.

On the issue of prejudice resulting from the denial of the motion, Tenant's counsel asserted that the primary issue before the Commission is one of first impression, related to one of the exemptions provided in the Rental Housing Act of 1985, D.C. OFFICIAL CODE § 42-3501.01 (2001). The brief expanded upon the issues in the notice of appeal and contains relevant case law from the District of Columbia Court of Appeals. The prejudice to the opposing party was the late filing of the motion and the supplemental brief, which the Commission addressed at its hearing by granting additional time, ten (10) days, to the Housing Provider to file a responsive brief.

Counsel for the Tenant was not diligent in seeking relief from the Commission. The Commission's rules provide: 1) that the motion to extend the time be filed before the

due date of the event to be extended, 14 DCMR § 3815.1-3 (1991); and 2) that briefs may be filed within five (5) days of service of the notice of scheduled hearing 14 DCMR § 3802.7 (1991). Tenant's counsel failed to comply with either of these rules.

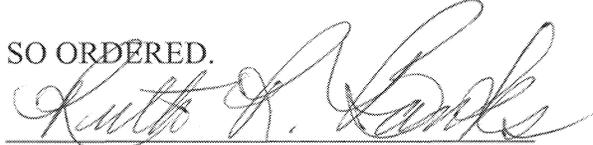
Notwithstanding the failure to comply with the Commission's rules, the Commission does find good faith in the motion from Tenant's counsel, which states he does not object to the Housing Provider's counsel having additional time to file any written response to the Supplemental brief.

Finally, the Commission must determine what prejudice exists to the opposing party. This issue was fully explored at the Commission's hearing. The resolution of the prejudice issue at the Commission's hearing was that the Commission granted counsel for the Housing Provider ten (10) days to respond to the Supplemental brief. This complied with the spirit of 14 DCMR § 3802.8 (1991), which provides ten (10) days for the filing of a responsive brief. However, the ten (10) day period expired on November 26, 2002, and no responsive brief, nor opposition to the motion, was filed on behalf of the Housing Provider.

This is a matter submitted to the sound discretion of the Commission, which must find good cause for an extension of time. 14 DCMR § 3815.2 (1991). In our discretion, the motion is granted, with the caveat that the granting of this motion is not to be deemed stare decisis for future late filings, by Tenant's counsel, without the proper motion in advance of the late filing. In this case, counsel for the Housing Provider was at a disadvantage at the Commission's hearing, because he did not have time to read and respond in writing to the late filed Supplemental brief. However, the Commission attempted to cure that problem by providing, post hearing, an opportunity for the Housing

Provider to file a responsive brief. As stated earlier herein, no opposition to the motion for leave to file out of time and no responsive brief was filed. Upon review of the motion and the circumstances surrounding the filing of the motion, good cause was shown for its late filing. Accordingly, the motion is granted.

SO ORDERED.



RUTH R. BANKS, CHAIRPERSON

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion for Leave to File Brief Out of Time in TP 27, 478 was mailed by priority mail, with confirmation of delivery, postage prepaid this 6th day of December, 2002, to:

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