

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,650 & TP 27,651<sup>1</sup>

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

Ward Six (6)

DEBORAH A. REDMAN  
Tenant/Appellant

v.

PHILIP A. GRAHAM  
RAYMOND J. PITTS  
LONG & FOSTER  
LEWIS BASHOOR  
Housing Providers/Appellees

**ORDER ON MOTION TO HOLD ORAL ARGUMENT BY  
CONFERENCE CALL**

June 12, 2003

**LONG, COMMISSIONER.** This matter is before the Commission on an appeal filed by the tenant, Deborah A. Redman. On April 21, 2003, the tenant filed a Motion to Hold the Oral Argument by Conference Call. The tenant requested a hearing by conference call because she is suffering from what she describes as post-eviction trauma. In the affidavit filed in support of her motion, the tenant stated that she is disabled and suffers from a medical condition she diagnosed. The tenant did not identify the medical condition or the nature of her disability. However, she averred that she has been "suffering from post-eviction trauma since September 2002 and [she is] not well enough

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<sup>1</sup> The tenant included TP 24,681 and TP 24,681A in the caption of the motion. The Commission dismissed the tenant's cross appeal in TP 24,681 and TP 24,681A, because the tenant failed to attend the Commission's hearing on March 10, 2003. Redman v. Graham, TPs 24,681 & 24,681A (RHC Apr. 24, 2003). As a result, the tenant's motion to hold the hearing by conference call is moot as it relates to TP 24,681 and TP 24,681A.

to attend hearings.” Affidavit at 1. She indicated that the trauma is “rooted in a deep-seated fear of the D.C. courts.” Id. The fear is caused by what the tenant described as the court’s policy, which justifies the death of disabled litigants when the court has a heavy docket. The tenant cited the death of an asthmatic man in the Superior Court of the District of Columbia and threats by Superior Court judges to incarcerate her as the basis of her fear. In addition, she stated that a Superior Court judge evicted her with “the courts’ full understanding that the Landlords were acting in retaliation and that an eviction, barring miracles, would be deadly.” Id. at 2.

The tenant, who participated in oral argument before the Commission on July 17, 2002 in TP 27,104, did not cite any actions by the Commission as the basis for the request to hold the hearing by conference call. However, the tenant stated, “Because the Commission’s conventions and policies appear to parallel those of the D.C. courts, the Tenant is also traumatized by the Commission.”<sup>2</sup> Id.

In addition, the tenant submitted a copy of a letter from her physician, dated Sunday, April 20, 2003. The letter was purportedly written and signed by the physician; however, the tenant did not submit a document with the physician’s original signature. According to the letter, the tenant’s physical condition has deteriorated as a result of stress following her eviction from the subject housing accommodation, and “she is often physically unable to meet the demands of the court for physical appearances.” Letter at 1. Like the tenant’s affidavit, the physician’s letter recounts events that allegedly

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<sup>2</sup> On April 23, 2003, the tenant filed a “Motion for Clarification (Justification of Death of the Disabled).” The tenant asked the “Commission to clarify whether it supports the policy of the D.C. Courts that justifies causing the death of disabled parties if the case load of the tribunal is heavy or if the tribunal views the disabled individual as an inconvenience or nuisance.” The Commission does not issue “generalized edicts.” Mims v. Mims, 635 A.2d 320, 326 (D.C. 1993). Accordingly, the Commission denied the tenant’s motion for clarification. Redman v. Graham, TPs 27,650 & 27,651 (RHC June 12, 2003).

occurred in Superior Court. The physician stated, “[S]he has described to me how officers of the court, laughingly, she says, still order her to stand, sit, or walk for long periods of time, as if tempting fate to see just how far they can push her before she collapses, something which I suspect you know has happened to others in this court.”<sup>3</sup>

Id.

While the Commission is cognizant of its responsibility to accommodate individuals with disabilities, the Commission has a concomitant obligation to protect the integrity of the administrative process. The Commission will not employ exacting standards when reviewing requests for accommodation. However, the Commission will not ministerially grant a request when the record and supporting documents do not state grounds upon which the Commission may grant the request.

According to the tenant’s affidavit, she has been suffering from post-eviction trauma since September 2002, and she is not well enough to attend hearings. A review of the certified record reflects that the tenant appeared for an adjudicatory hearing in TP 27,650 and TP 27,651 on January 22, 2003. At that time, the tenant asked that the hearing not last for more than two hours, and the Rent Administrator granted her request.

On December 4, 2002 and February 21, 2003, the Commission issued notices for the appellate hearing in TP 24,681 and TP 24,681A. These notices, for hearing a scheduled for February 18, 2003 and March 10, 2003, contained customary language that instructed individuals with disabilities to contact the Commission if they desired an

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<sup>3</sup> The Commission does not have knowledge of the court officers’ conduct described in the physician’s letter. More importantly, the conduct described in the letter does not, and will not, occur in the Commission.

alternative format of the hearing. The tenant did not request an alternative format for the hearing scheduled for February 18, 2003 and March 10, 2003.

A snowstorm prevented the Commission from holding the hearing on February 18, 2003. As a result, the Commission continued the hearing to March 10, 2003. After the tenant received the Commission's hearing notice, the tenant asked to reschedule the hearing, for reasons that had no bearing on her physical or emotional health.<sup>4</sup> After her efforts to reschedule the hearing for reasons unrelated to her health failed, she requested a continuance of the March 10, 2003 hearing, because she was ill. The tenant never alleged that post-eviction trauma, suffered since September 2002, precluded her from appearing before the Commission on February 18, 2003 or March 10, 2003. To the contrary, the tenant asked the Commission to reschedule the hearing and set a new date to hear three petitions simultaneously. After the Commission denied the tenant's request to continue the hearing because she was ill, the tenant filed the instant motion to hold the hearing by conference call. See Redman v. Graham, TPs 24,681 & 24,681A (RHC Apr. 24, 2003) (discussing the tenant's myriad efforts to continue the hearing).

The record and the tenant's supporting documents do not contain grounds upon which the Commission may grant the request to hold the hearing by conference call. The tenant has interacted with the agency continually since September 2002. The tenant participated in a hearing on January 22, 2003. On March 4, 2003, she filed a motion requesting the Commission to hear three petitions simultaneously. In addition, the tenant

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<sup>4</sup> On March 4, 2003, the tenant filed a motion to reschedule the oral argument in TP 24,681 and TP 24,681A. In the motion the tenant stated, "Tenant requests that a hearing date be set to hear all 3 petitions as a matter of ongoing retaliation." The Commission denied the motion to continue the hearing, because the tenant did not file the motion five days before the hearing or in sufficient time for the housing provider to file an opposition before the scheduled hearing. See Redman v. Graham, TPs 24,681 & 24,681A (RHC Mar. 25, 2003).

has filed more than twenty pleadings in the Commission between October 2002 and April 2003. These facts are not easily reconciled against her April 21, 2003 request to hold the hearing by telephone, because she has been suffering from post-eviction trauma since September 2002.

In Mc Laughlin v. Pyles, 1999 Ohio App. LEXIS 5556, the appellant, who had multiple sclerosis, requested a telephone hearing. The court acknowledged that the appellant's multiple sclerosis qualified her as an individual with a disability as defined by the Americans with Disability Act (ADA). In addition, the court recognized the line of cases that require public entities to provide physical access and interpreters. However, the court held that the appellant's request for a telephone hearing, as an accommodation, is not "one that the ADA requires." Id. at 6.

Section 12132 of the Americans with Disability Act (ADA) states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to the discrimination of any such entity." Section 12132, Title 42, U.S.Code. However, a public entity does not have to provide an accommodation that "would result in a fundamental alteration in the nature of a service, program, or activity . . . ." Section 35.150(a)(3), Title 28, C.F.R.

Id. at 5.

The Act does not vest the Commission with statutory authority to hold hearings by telephone, and the Commission's regulations do not contain any provisions for conducting telephone hearings. Consequently, the Commission does not have the procedures, guidelines, or equipment to hold telephone hearings in a manner that comports with due process. See Knisley v. Unemployment Compensation Bd. of Review, 501 A.2d 1180 (Pa. 1985) (holding telephone hearings are not permitted when the agency does not have regulations designed to insure the preservation of due process

rights).<sup>5</sup> Consequently, a hearing by conference call “would result in a fundamental alteration in the nature” of the Commission’s hearings.

In addition, the tenant’s physician’s letter is based upon events that purportedly occurred in Superior Court, and the physical demands of spending an entire day in Superior Court, where there is trial calendar with numerous litigants. The exhaustion experienced when waiting for the court to reach each case, the rigors of direct examination, cross-examination, summation, and the attendant demands of a trial court, are not present in an administrative appellate hearing before the Commission.

The Commission holds appellate hearings, which consist of oral statements by the parties. The Commission does not receive testimony or documentary evidence, and there is no exchange between the parties. The Commission schedules each hearing for a specific date and time, which the parties may select. Since each case is set for a specific time, the Commission begins each hearing at the appointed hour. The Commission allots twenty minutes for each party to present its case. As a result, the Commission’s hearings are normally held in less than one hour. The Commission has adopted a convention whereby the parties are never required to stand, walk, or move around the Commission’s hearing room.<sup>6</sup> Each party simply presents an oral argument to the Commission.

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<sup>5</sup> Telephone hearings are a permissible means of resolving interstate unemployment compensation claims provided the agency does not violate the parties’ right to due process. Sterling v. District of Columbia Dep’t of Employment Servs., 513 A.2d 253 (D.C. 1986); D.C. OFFICIAL CODE § 51-111(i) (2001) (providing testimony in unemployment hearings may be given and received by telephone). In Sterling, the court reversed and remanded for a new hearing, because the appeals examiner denied the petitioner due process of law.

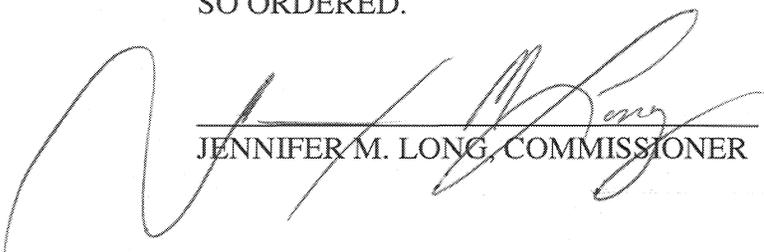
<sup>6</sup> Unlike the practice in Superior Court, no one instructs parties to stand when the Commissioner’s enter the room. In fact, the Chairperson routinely instructs parties to remain seated when the Commissioners enter the hearing room.

Periodically, the Commissioners pose questions to the parties, which they answer from their seats. The entire process is structured and collegial.

The tenant's affidavit and letter from her physician are not grounded upon the realities of the Commission's appellate administrative practices or procedures. Neither the tenant nor her physician alleged an inability to attend a structured appellate hearing that will not exceed one hour. In addition, actions attributed to the Superior Court and the tenant's fear of the Superior Court are not sound bases for a request to hold the Commission's hearing by conference call.

For the foregoing reasons, the Commission denies the tenant's request to hold the hearing in TP 27,650 and TP 27,651 by conference call. The Commission has scheduled this matter for oral argument on July 17, 2003 from 10:30 a.m. to 11:30 a.m. If the tenant's physician opines that the tenant is unable to participate in the structured appellate proceeding described herein, the Commission must receive a written statement, which contains the physician's original signature, no less than ten business days before the scheduled hearing.

SO ORDERED.



JENNIFER M. LONG, COMMISSIONER

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order on Motion to Hold Oral Argument by Conference Call in TP 27,650 and TP 27,651 was sent priority mail with delivery confirmation, postage prepaid, this 12th day of June 2003 to:

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