

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,681 & TP 24,681 A

In re: 40 G Street, S.W.

Ward Six (6)

DEBORAH A. REDMAN
Tenant/Appellant/Cross Appellee

v.

PHILIP GRAHAM
Housing Provider/Appellee/Cross Appellant

TP 27,104

DEBORAH A. REDMAN
Tenant/Appellant

v.

PHILIP GRAHAM
Housing Provider/Appellee

TP 27,650 & TP 27,651

DEBORAH A. REDMAN
Tenant/Appellant

v.

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

ORDER ON MOTION FOR RECUSAL OF RENTAL HOUSING COMMISSION

April 21, 2003

PER CURIAM. On March 4, 2003, Deborah A. Redman, Tenant, filed a motion for recusal of all three Commissioners of the Rental Housing Commission. The Housing Provider did not file an opposition to the motion.

I. The Law and Discussion

In her affidavit the Tenant alleges: 1) that she is disabled and an authority on her medical condition; 2) a complaint because the Commission granted the Housing Provider's attorney a continuance; 3) a complaint about a rescheduled hearing; 4) a complaint that the Commission ruled that the Housing Provider acted in good faith; 5) several complaints about the Commission's rules; 6) a complaint that the Commission did not grant summary disposition of her appeals; and 7) a complaint against the Chairperson. The last complaint is based on the telephone conversation initiated by the Tenant with the Chairperson on February 20, 2003. The Tenant called to reschedule the hearing, that was not held due to a snow storm that caused the District government to be closed on February 18, 2003. Her affidavit states that the Chairperson displayed anger, that no message was left for Mrs. Miles to call her,¹ and that the Chairperson made a threat to have the Tenant prosecuted and incarcerated for recording the telephone conversation. For the seven listed reasons, the Tenant requested recusal of all three Commissioners from her appeals.

¹ Mrs. LaTonya Miles is the Commission's contact representative, who was not a work at the time the Tenant called. However, the Tenant has Mrs. Miles' office telephone number and has called her many times about the status of her appeal cases. The Tenant has also left messages in Mrs. Miles' voice mail for a return telephone call. The Tenant could have left a message for Mrs. Miles and waited at least 24 hours for Mrs. Miles to make the return telephone call, before calling the Commission on February 21, 2003, the day she called and talked with the Chairperson.

There is no Commission rule on recusal. Pursuant to 14 DCMR § 3828 (1998), when the Commission has no rule that governs an issue, it refers to the rules of the District of Columbia Court of Appeals and the rules of the Superior Court of the District of Columbia for guidance.

Superior Court Civil Rule (Sup. Ct. Civ. R.) (2003) 63-I states:²

- (a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.
- (b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith....³

A review of case law and other authorities reveals two major considerations, when deciding a motion for recusal. First, whether the affidavit and the circumstances surrounding it state a reason from extrajudicial sources that indicates bias or prejudice by a judge. See Scott v. United States, 559 A.2d 745 (D.C. 1989). In this appeal, the alleged sources of the bias or prejudice were the Commission's rulings and a telephone call to the Commission initiated by the Tenant to reschedule a hearing that was not held, because a snow storm caused the District government to be closed on February 18, 2003, the date of the scheduled hearing. Nothing in the affidavit relates to extrajudicial information related to the disputed appeal issues or related to the record facts in any of the Tenant's pending appeals.

² Sup. Ct. Civ. R. 63-I is the recusal rule for the trial court; however, the Commission is an appellate tribunal, which uses trial court rules for guidance.

³ Ms. Redman is pro se, therefore, no good faith statement made by her counsel is possible.

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The Chairperson is the “administrative head” of the Commission, which includes control of scheduling hearing dates. D.C. OFFICIAL CODE § 3502.01(a) (2001). Indeed, scheduling a hearing is participation in a judicial proceeding, that has nothing to do with the merits of an appeal. That activity was not an extrajudicial source of information, which could affect the merits of the issues appealed to the Commission. In other words, the Chairperson’s attempts to reschedule the hearing for the Tenant had nothing to do with the facts and issues in these appeals.

Moreover, the opinion of a judge about the mental status of a party, i.e., questioning the mental capacity of the party, may be imprudent, but does not represent the prejudice envisioned by Sup. Ct. Civ. R. 63-I, as stated by the court in Burt v. First American Bank, 490 A.2d 182, 187 (D.C. 1985). Similarly, in this appeal, the Chairperson’s opinion that the Tenant’s conduct should be prosecuted for recording telephone conversations without informing the person called, does not represent the prejudice envisioned by Sup. Ct. Civ. R. 63-I, because the Tenant’s conduct of recording the telephone conversation was “what the [Chairperson] learned from [her] participation in the case.” Id. The Chairperson’s attempt to reschedule the Tenant’s hearing was conduct occurring inside the judicial processes, and not outside or extrajudicial information.⁴ “The [Chairperson’s] comments, cited by the appellant in her affidavit, arose solely from [the Chairperson’s] contact with appellant during the litigation and [her] knowledge of the protracted procedural history of the appellant’s case. We

⁴ Ms. Redman failed to state in her affidavit that the Chairperson repeatedly asked her for dates convenient and dates inconvenient to her for a hearing. Ms. Redman refused to answer both questions. Subsequently, the next day after her telephone call, February 21, 2003, the hearing was rescheduled for March 10, 2003, and the United States Postal Service delivered the notice of the hearing to Ms. Redman’s post office box on February 22, 2003. She failed to appear for the rescheduled hearing.

conclude that the facts as stated by the appellant in her affidavit do not support an inference of bias sufficient to have required recusal.” Id. The sufficiency of the affidavit is judged by what the party put in it, not by the state of mind of the party or the judge. In re Evans, 411 A.2d 984 (D.C. 1980). Accordingly, the Tenant’s state of mind, as evidenced by her use of the words “animosity,” “threatening,” and “terrified” in her affidavit, do not support her affidavit, because those words relate to the Tenant’s state of mind, which is not a consideration for recusal. Id. Accordingly, the Tenant’s affidavit does not present a sufficient basis for recusal of the Chairperson.

Second, the legal authorities state a judge should disqualify herself/himself in a proceeding in which a judge’s impartiality might reasonably be questioned. See CODE OF JUDICIAL CONDUCT, Canon 3 (C)(1). This Canon has been interpreted to require recusal where there is “an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question the judge’s impartiality.” Id. See also Anderson v. United States, 754 A.2d 920 (D.C. 2000). Here, the Tenant’s statements in the affidavit about the telephone conversation may cause an average citizen to reasonably have a question about the Chairperson’s impartiality, although all of the contacts with the Tenant were from the telephone call that was initiated by the Tenant and handled by the Chairperson in her capacity as the administrative head of the Commission.⁵ None of the Tenant’s complaints against the Chairperson arise from facts from an extrajudicial source.⁶

⁵ See In re Parr, 13 B.R. 1010 (D.C. N.Y. 1981).

⁶ The facts as reported in the affidavit about the telephone conversation are not accurate and complete. However, the recusal issue does not turn on the veracity of either the party or the judge. It is the perception by third parties, the average citizens, that controls the appearance of impartiality.

However, the Chairperson recuses herself from all of the Tenant's appeals to avoid the appearance of impartiality to an average citizen.

II. The Conclusion

The reason for recusal numbered 1 relates to the Tenant's health, and reasons numbered 2- 6 in the Tenant's affidavit do not state a basis for recusal, because disagreement with a court's rulings is not a cause for recusal. See Anderson, supra, citing Gregory v. United States, 393 A.2d 132, 142-43 (D.C. 1978); Bokum Resources Corp., 26 B.R. 615 (D.C. N. M. 1982). The seventh reason for recusal related solely to the Chairperson. The Tenant's reasons for recusal do not originate from extrajudicial information, that would affect the impartiality of Commissioners Young and Long. These two Commissioners were not involved in the telephone conversation with the Tenant, and therefore, no question was properly raised about their bias or prejudice in the Tenant's affidavit. Therefore, they will remain the Commissioners on the Tenant's appeals, and the Chairperson recuses herself.

The Tenant's motion is granted in part, and denied, in part, as stated herein.

SO ORDERED



RUTH R. BANKS, CHAIRPERSON



RONALD A. YOUNG, COMMISSIONER



JENNIFER M. LONG, COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Order on Motion for Recusal of Rental Housing Commissioners in TP 24,681, TP 24,681 A, TP 27,104, TP 27,650, and TP 27,651 A was served by priority mail, with delivery confirmation, postage prepaid, this 21st day of April, 2003, to:

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