

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 27,937

In re: 3045 N Street, N.W., Unit 1

Ward Two (2)

**RONA HAY**  
Tenant/Appellant

v.

**PATRICK MERKLE**  
Housing Provider/Appellee

**ORDER DISMISSING APPEAL**

September 9, 2004

**LONG, COMMISSIONER.** This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Rent Administrator on March 24, 2004. The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (1991) and its amendments, govern the proceedings.

The tenant initiated this matter when she filed, through counsel, Tenant Petition (TP) 27,937 on August 26, 2003. Following the evidentiary hearing, Hearing Examiner Bradford issued a decision and order on March 24, 2004. The hearing examiner denied the tenant petition after finding that the tenant failed to prove her claims. Hay v. Merkle, TP 27,937 (RACD Mar. 24, 2004). On April 12, 2004, the tenant's attorney filed Tenant's Request for Vacation of Dismissal, Reinstatement of Tenant Petition, and

Notice of Appeal. In response, the housing provider filed a Motion for Summary Affirmance, which the Commission denied on May 25, 2004.

On June 4, 2004, the Commission issued the hearing notice to the tenant's attorney, Barbara Rice, Esquire and the housing provider, Patrick Merkle, Esquire. The Commission advised the parties that the hearing would be held on Thursday, July 29, 2004 at 2:00 p.m. When the Commission convened the hearing on July 29, 2004, Michael S. Levy appeared and identified himself as the attorney for the tenant, Rona Hay. Mr. Levy, who is a member of Attorney Rice's firm, indicated that Ms. Rice was not available, because of the demands of her caseload. The housing provider did not appear. After asking Mr. Levy several preliminary questions, the Commission exercised its discretion and continued the hearing.

On July 30, 2004, the Commission issued the hearing notice and advised the parties that it would convene the hearing on Tuesday, September 7, 2004 at 3:00 p.m. The Commission mailed the hearing notice by priority mail with delivery confirmation to the tenant, Rona Hay, the tenant's attorney, Barbara Rice, and the housing provider, Patrick Merkle. The United States Postal Service (USPS) Internet based tracking and confirmation service reflects that the USPS delivered the hearing notice to the tenant on July 31, 2004, and delivered the notice to the tenant's attorney and the housing provider on August 2, 2004.

When the Commission convened the hearing on September 7, 2004, the housing provider appeared. However, the tenant and the tenant's attorney failed to appear. Since the tenant did not appear personally or through counsel, the housing provider made an oral motion to dismiss the appeal. After noting that the record reflected that the USPS

delivered the hearing notice to the tenant and her attorney, the Commission orally granted the housing provider's motion to dismiss the appeal. The Commission also cited Stancil v. District of Columbia Rental Hous. Comm'n, 806 A.2d 622 (D.C. 2002) in support of its decision to dismiss the appeal.

In Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000), the Commission dismissed the appeal when neither the housing provider nor his attorney appeared for the hearing. After the Commission dismissed the appeal, the housing provider filed a petition for review in the District of Columbia Court of Appeals.

In Stancil v. District of Columbia Rental Hous. Comm'n, 806 A.2d 622 (D.C. 2002), the court affirmed the dismissal and held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing. The court noted that the Commission does not have a specific regulation that prescribes dismissal when a party fails to attend a hearing. However, the court stated that the Commission's regulations empower the Commission to rely upon the court's rules, when the Commission's rules are silent on a procedural issue. The Commission's regulation provides:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

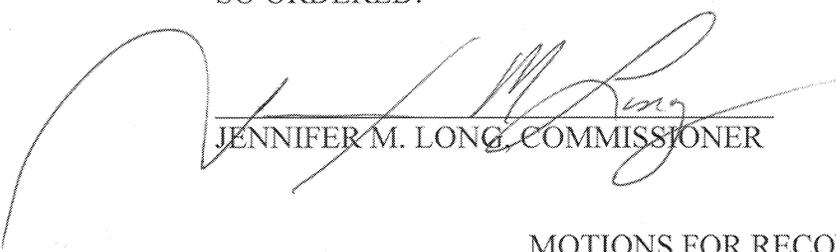
14 DCMR § 3828.1, 45 D.C. Reg. 687 (1998).

The court held: "This court's Rule 14 permits dismissal of an appeal 'for failure to comply with these rules or for any other lawful reason.' In addition, our Rule 13 authorizes an appellee to file a motion to dismiss whenever an appellant fails to take the necessary steps to comply with the court's procedural rules. ... Both Rule 13 and Rule 14

support the proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal. ... [W]e cannot find fault with the RHC's consideration of our rules in applying section 3828.1 of its own regulations." Stancil, 806 A.2d at 625.

In accordance with the holding in Stancil, the Commission granted the housing provider's oral motion to dismiss the instant appeal, because the tenant and tenant's counsel failed to appear at the Commission's hearing and prosecute her claim.

SO ORDERED.



JENNIFER M. LONG, COMMISSIONER

#### MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (1991), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (1991), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

#### JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the D.C. Court of Appeals. The Court's Rule, D.C. APP. R. 15(a), provides in part: "Review of orders and decisions of an agency shall be obtained by filing with the clerk of this court a petition for review within thirty days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed ... and by tendering the prescribed docketing fee to the clerk." The Court may be contacted at the following address and telephone number:

D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W.  
6th Floor  
Washington, D.C. 20001  
(202) 879-2700

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Order Dismissing the Appeal in TP 27,937 was mailed on this 9<sup>th</sup> day of September 2004 by priority mail with delivery confirmation, postage prepaid to:

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